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PROCEEDINGS

Monday - November 20, 2023

9:07 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE CLERK: Calling Civil 20-5671, Epic Games, Inc.
vs. Google LLC, and Multidistrict Litigation 21-2981, In re
Google Play Store Antitrust Litigation.

Counsel, just state your appearance.

MR. BORNSTEIN: Good morning, Your Honor. Gary
Bornstein for Epic Games.

MR. POMERANTZ: Good morning, Your Honor.
Glenn Pomerantz on behalf of Google.

THE COURT: Okay. Just one second.

All right. Now, what is this thing, Exhibit 1492?

MR. BORNSTEIN: I can't see, Your Honor. I don't know
what that is, Your Honor.

MR. POMERANTZ: What is the exhibit number?

THE COURT: 1492. This was handed to my CRD this
morning subject to some joint agreement of some sort.

MR. EVEN: Yes, Your Honor. This is a document that's
going to be used in the first examination of this morning that
the parties have agreed will be handed -- parts of it are going
to be shown on the screen but not the document in its entirety.
It's going to be heavily redacted.

THE COURT: Why is that?

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1 **MR. EVEN:** It is the same agreement between Apple and
2 Google that Ms. Moskowitz referred to with Mr. Pichai last
3 week, and the parties have agreed that other than specific
4 parts of it that need to be shown on the screen, the rest is
5 going to remain.

6 **THE COURT:** Well, I didn't agree to seal it.

7 **MR. EVEN:** Subject to your approval, of course,
8 Your Honor.

9 **MR. POMERANTZ:** Your Honor --

10 **THE COURT:** Well, I haven't gotten anything about
11 this. I just -- someone handed Ms. Clark a document saying
12 "We're good to go," and we're not good to go.

13 **MR. POMERANTZ:** Your Honor --

14 **THE COURT:** You know, sealing is not in your hands.

15 **MR. EVEN:** I fully understand that, Your Honor. We're
16 not intending to seal it in the way that it's going to come out
17 at the end. I'm just --

18 **THE COURT:** I didn't approve this. So you can't do
19 that. I didn't approve that. All right? You didn't ask; and
20 in the absence of informed request, I'm not going to let you do
21 it.

22 **MR. POMERANTZ:** Your Honor, if I could.

23 So there were motions filed by both Google and Apple
24 relating to this document and the terms of this agreement.
25 They were filed in advance of Mr. Pichai's testimony.

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1 In advance of that testimony, we agreed and Your Honor --
2 and Your Honor was informed and agreed that what Mr. Pichai
3 would testify to were specific numbers that they were
4 interested in that he testified to in open court, and it had to
5 do with both the amount of money that Google pays Apple under
6 this agreement as well as the revenue share split.

7 And I have been speaking with Mr. Even about the
8 questioning of the next witness, Mr. Harrison, and all he's
9 interested in bringing out are those same numbers as well as
10 paragraph five of this agreement, which we don't have any
11 objection to being shown in open court. We're not trying to --
12 that is not something that's going to be kept from the public.

13 So that's all that they're interested in bringing out from
14 this agreement; and so since that's all that they were
15 interested in bringing out, all of that will be publicly stated
16 in open court. The numbers have previously stated, so they'll
17 just be reaffirmed by Mr. Harrison, and then he'll show
18 paragraph five.

19 As to whether the rest of this agreement comes into
20 evidence or not -- I mean, the whole document will be given to
21 the jury for their deliberations. It will be an exhibit, and
22 the actual sealing of this document will be dealt with as part
23 of the posttrial submission.

24 **THE COURT:** Okay. Well, I'm not going to seal it now.

25 **MS. BELL:** I don't think either side is asking, you

PROCEEDINGS

1 know, we need to do that.

2 There is one other issue that we wanted to --

3 **THE COURT:** You don't need to hand this to the jury.
4 Just show the -- just show whatever you want. Just put it on
5 the screen and show it, but don't --

6 **MR. EVEN:** I'm happy to do that.

7 **THE COURT:** It's going to look disproportionately
8 significant if one document out of the hundreds we've seen gets
9 handed to the jury. Okay?

10 **MR. EVEN:** I'm happy to do that.

11 **THE COURT:** So don't hand it to the jury.

12 Now, whether this gets sealed or not, we'll work it out
13 later.

14 **MR. POMERANTZ:** Okay. Thank you, Your Honor.

15 **THE COURT:** Okay. What's happening with Spotify? Is
16 that today?

17 **MR. ZAKEN:** Good morning, Your Honor. Michael Zaken
18 on behalf of Epic Games.

19 Spotify and Google have sought to seal --

20 **THE COURT:** No, no, I know. Are you playing that tape
21 today?

22 **MR. ZAKEN:** Yes, we were planning to play that today.

23 **THE COURT:** Okay. Here is the disposition. I've
24 gotten all the briefing.

25 With respect to Spotify's request to seal portions of

PROCEEDINGS

1 deposition testimony of its witness Sandra Alzetta and
2 Exhibits -- let me make sure I got this right -- Exhibits 1532,
3 PX2058, PX2062, and 1496; is that right?

4 **MR. ZAKEN:** That's right, except I think 2062 is no
5 longer going to be discussed.

6 **THE COURT:** Oh, okay. All right. So take that off
7 the list.

8 But with respect to that testimony and 2062, all the other
9 exhibits are correct according to counsel. The baseline are
10 the standards that I've already discussed at length in my prior
11 sealing order in this case at 556 F.Supp. 3d 1106 and
12 specifically with respect to the standards that are stated on
13 page 1107 of that decision, all of which I'm going to
14 incorporate here. We've heard a lot about them. I'm not going
15 to repeat them.

16 In pertinent part, Spotify had the burden of attempting to
17 overcome the strong public policy and commitment to open court
18 proceedings by, quote, "articulating compelling reasons
19 supported by specific factual findings that outweigh the
20 general history of access and the public policies favoring
21 disclosure," close quote. It's on page 107 of my order.

22 Conclusory statements by a party about potential harm from
23 public disclosures or guesses, hypotheses or conjecture will
24 not establish a compelling reason to overcome the public's
25 right to access to all of the proceedings in this public forum.

1 So with that background, here is the disposition:

2 One, evidence of Spotify's internal rationales for
3 proposals made to Google leading to the execution of the User
4 Choice Billing Agreement, Spotify's internal negotiation
5 strategy, and Spotify's contingency planning during the
6 negotiations in the event of an agreement was not reached will
7 be sealed.

8 Spotify has adequately demonstrated with specific facts
9 that disclosure of this information, quote, "could be used
10 unfairly to unfairly disadvantage Spotify in contract
11 negotiations with its other payment partners and distribution
12 partners," close quote, including OEMs, such as mobile TV,
13 gaming, and auto partners.

14 So that is granted. You can't get into that. That's
15 sealed. Okay?

16 Number two, evidence of Spotify's internal data and
17 analysis regarding the total usage of Spotify's audio streaming
18 app that occurs on mobile devices will also be sealed.

19 Spotify again has adequately demonstrated with specific
20 facts that this information could be used against Spotify by
21 competitors, such as Apple, as well as by distribution partners
22 and advertisers.

23 Number three, evidence of the terms of Spotify's agreement
24 with Google regarding user choice billing and the Google Play
25 Store, as well as negotiations between Google and Spotify about

1 the use of Google Play Billing, including specific rates and
2 terms that were proposed by each party to the negotiations,
3 will not be sealed. This will be presented in open court.

4 For this category of evidence Spotify has offered only
5 purely conclusory assertions along the lines of the terms are,
6 quote, "commercially sensitive," close quote, and, quote, "it
7 would be harmed in its business if those terms were disclosed
8 to the public," close quote. That's in Docket Number 749-1 at
9 paragraphs 6 and 7. These are bromides and platitudes, not
10 specific facts.

11 In addition to that, the agreement between Google and
12 Spotify is not a licensing agreement, far from it; and trial
13 testimony has established that the agreement was a custom,
14 one-of-a-kind type of agreement tailored to these two parties
15 and neither Spotify nor Google has adequately demonstrated with
16 specific facts how a disclosure might harm the companies in
17 their dealings with others.

18 And, number four -- you're not going to use Exhibit 2062?

19 **MR. ZAKEN:** We're not going to use that.

20 **THE COURT:** Are you sure?

21 **MR. ZAKEN:** Yes.

22 **THE COURT:** All right. Are you going to make any
23 references to average payment processing fees?

24 **MR. ZAKEN:** There may be some references to average
25 payment processing fees.

1 **THE COURT:** Well, I'm just going to say this:

2 Number four, references to the average payment processing
3 fees Spotify paid to each of the payment processors it uses for
4 payments by customers in the United States for subscriptions to
5 Spotify's audio streaming app for each year from 2017 through
6 2021 -- mid-2021, will not be sealed.

7 Spotify, again, for this category offered only purely
8 conclusory assertions and no demonstration of specific facts
9 that might establish a reasonable likelihood of competitive
10 injury or other injury.

11 So there you have it. Okay? Are you going to be able to
12 trim that deposition a little bit?

13 **MR. BORNSTEIN:** Your Honor, I do have one question on
14 the sealing ruling here.

15 We do have some of the categories of information that
16 Your Honor has ruled should be sealed we still would like to be
17 able to present to the jury. So what we can do is slice and
18 dice the deposition to make sure we play as much as possible
19 consistent with the Court's ruling in open court, and then
20 however Your Honor would like to proceed with respect to the
21 portions that the Court is sealing we can present to the jury
22 separately.

23 **THE COURT:** Is this going to be coming up in a depo,
24 though? I mean, in a videotape?

25 **MR. BORNSTEIN:** Correct, Your Honor. Yeah, so we can

1 just slice and dice the depo.

2 **THE COURT:** All right. Well, I suppose we can just do
3 what we did last time. You can just hand it to them.

4 **MR. BORNSTEIN:** However Your Honor would like to
5 proceed is fine.

6 **THE COURT:** Okay. Who do we have next?

7 **MR. HOGBERG:** Your Honor, may I be heard on behalf of
8 Spotify USA on the order?

9 **THE COURT:** The order is done. You've had plenty of
10 opportunity in the papers. Okay?

11 **MR. HOGBERG:** Thank you.

12 **THE COURT:** All right. Who's next?

13 **MR. POMERANTZ:** Your Honor, there's a couple --
14 there's just a couple very short things.

15 **THE COURT:** Oh, yes.

16 **MR. POMERANTZ:** Number one, is I guess we would renew
17 our request that you consider having trial on December 1 and
18 letting the jury know so that they can plan accordingly since
19 we lost Thursday. That's next Friday, a week from this Friday.

20 **THE COURT:** That's a week from this coming Friday?

21 **MR. POMERANTZ:** This Friday, yeah. So it will just
22 give them a chance.

23 **THE COURT:** I'll tell them tomorrow.

24 **MR. POMERANTZ:** Okay. That's fine.

25 And the second thing is last week we were debating the

1 issue of whether a document they wanted to get in through the
2 deposition of Ms. Porat, whether there was sufficient
3 foundation for that document. It's a document that had some
4 numbers on it. Your Honor looked at it on Wednesday or
5 Thursday of last week.

6 We have reached an agreement between us, and I just want
7 to let Your Honor know what that agreement is, and for sure
8 given the conversation we just had.

9 **THE COURT:** Okay.

10 **MR. POMERANTZ:** We would not -- we would withdraw our
11 foundation objection and let the exhibit get in through
12 Ms. Porat's deposition testimony provided that they don't
13 disclose the numbers in open court. And they think they can
14 conduct the questioning in a way --

15 **THE COURT:** Can I just jump in? I actually have no
16 recollection. I don't know what these -- I don't know who
17 Ms. Porat is or what these numbers are.

18 **MR. POMERANTZ:** We can take it up during the lunch
19 break if you want, you know, at some later point in the day. I
20 can put the document in front of Your Honor so you can see what
21 we're talking about.

22 **THE COURT:** Let's do that. Why don't we do that.

23 **MR. POMERANTZ:** Fine.

24 **THE COURT:** Okay. All set? Let's get the jury out.

25 **MR. BORNSTEIN:** Yes, Your Honor. Thank you.

(Proceedings were heard in the presence of the jury:)

THE CLERK: Calling Civil 20-5671, Epic Games, Inc.
vs. Google LLC, and Multidistrict Litigation 21-2981, In re
Google Play Store Antitrust Litigation.
Counsel.

MR. BORNSTEIN: Good morning, Your Honor. Gary
Bornstein for Epic Games, and I have with me at counsel table
Michael Zaken, Andrew Wiktor, Lauren Moskowitz, and
Yonatan Even.

MR. POMERANTZ: Good morning, Your Honor.
Glenn Pomerantz on behalf of Google, and with me is Michelle
Park Chiu, Lauren Bell, Lara Kollios, and Jonathan Kravis.

THE COURT: Okay. Ready to roll. Who's next?

MR. BORNSTEIN: Your Honor, Epic calls Don Harrison to
the stand.

THE CLERK: Please stand and raise your right hand.

DONALD STEWART HARRISON,
called as a witness for the Plaintiff, having been duly sworn,
testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you. Please be seated.

JUROR NO. 7: We're short one just so you know.

THE COURT: Oh. Short a headshot? Oh, okay.
Do you have one more?

THE CLERK: Please state your full name for the Court

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1 and spell your last name.

2 **THE WITNESS:** Donald Stewart Harrison,
3 H-A-R-R-I-S-O-N.

4 **THE CLERK:** Thank you.

5 **THE COURT:** Please.

6 **DIRECT EXAMINATION**

7 **BY MR. EVEN:**

8 **Q.** Good morning, Mr. Harrison.

9 **A.** Good morning.

10 **Q.** You joined Google in 2005; correct?

11 **A.** I did.

12 **Q.** And today you are Google's president of global
13 partnerships; is that right?

14 **A.** I am.

15 **Q.** And on partnership matters, you report to Google's chief
16 business officer, Mr. Schindler, who in turns report to
17 Mr. Pichai; is that correct?

18 **A.** That's correct.

19 **Q.** And on transactional matters and investments, you report
20 directly to Mr. Pichai; is that correct?

21 **A.** I do.

22 **Q.** You became aware of Fortnite soon after it launched on PC
23 and consoles; right?

24 **A.** I did.

25 **Q.** And you were excited about the prospect of Epic bringing

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1 Fortnite to Android; correct?

2 **A.** I was.

3 **Q.** At some point you learned that Epic intended to launch on
4 Android outside of Google Play; is that right?

5 **A.** Yes.

6 **Q.** And this gave rise to a concern at Google at the time that
7 if Epic were successful in launching outside of Play, other
8 developers would also launch outside of Google Play; correct?

9 **A.** Yes.

10 **Q.** Please turn in your binder, I hope you have the binder
11 before you --

12 **A.** I do.

13 **Q.** -- to Exhibit 1483.

14 **A.** (Witness examines document.)

15 **Q.** Do you see this is an e-mail between yourself, Mr. Jamie
16 Rosenberg, and others taking place around July 10th and 11th,
17 2018?

18 **A.** This is the e-mail to Michael Murphy?

19 **Q.** I'm sorry, sir?

20 **A.** This is the e-mail Michael Murphy?

21 **Q.** This is an e-mail from you to Mr. Murphy, Jamie Rosenberg,
22 and others, yes.

23 **A.** Yes. Yeah.

24 **MR. EVEN:** Your Honor, I'd move to admit Exhibit 1483
25 into evidence.

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1 **MR. POMERANTZ:** No objection, Your Honor.

2 **THE COURT:** It is admitted.

3 (Trial Exhibit 1483 received in evidence.)

4 **MR. EVEN:** Thank you, Your Honor.

5 **BY MR. EVEN:**

6 **Q.** If you turn to page 3 of the document, Mr. Harrison. You
7 see there's a 9:51 p.m. e-mail from Mr. Rosenberg on July 10th?

8 **A.** I do see that.

9 **Q.** And do you see that in the first -- in that e-mail,
10 Mr. Rosenberg writes that he's seeking your guidance on how to
11 secure some quick approvals to negotiate a potentially large
12 deal on short notice with Epic, the developer of Fortnite,
13 related to the launch of its game on Android; is that right?

14 **A.** I see that.

15 **Q.** If you turn back to the first page of this e-mail, do you
16 see that the e-mail at the top of this thread is from you to
17 Mr. Murphy as you mentioned?

18 **A.** Yes, it is.

19 **Q.** And you see that you stated in there that (as read):

20 "This is a critical matter. We want to have a broad
21 discussion on this with Philip, Sundar, Ruth, Kent, plus
22 Hiroshi, and Jamie."

23 Do you see that?

24 **A.** I do.

25 **Q.** Now, Philip here is a reference to Mr. Schindler, your

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1 boss and Google's chief business officer; is that right?

2 **A.** That is correct.

3 **Q.** And Ruth here is a reference to Ms. Porat, the chief
4 financial officer of Google; correct?

5 **A.** That is right.

6 **Q.** And Kent here is a reference to Mr. Kent Walker, the chief
7 legal officer of Google; is that right?

8 **A.** That is right.

9 **Q.** And Sundar is a reference to Mr. Pichai?

10 **A.** That is right.

11 **Q.** And Hiroshi and Jamie are references to Mr. Lockheimer and
12 Mr. Rosenberg; is that right?

13 **A.** That is right.

14 **Q.** And you can put away 1483.

15 As part of the broad discussion you proposed having with
16 Google's top executives, some executives wanted to explore a
17 potential acquisition of some meaningful stake in Epic;
18 correct?

19 **A.** Yeah. An investment in Epic, yes.

20 **Q.** And if you turn to Exhibit 1484 in your binder, and do you
21 see that's a July 16, 2018, e-mail chain between yourself and
22 others in Google?

23 **A.** I see that.

24 **MR. EVEN:** Your Honor, I'd move to admit Exhibit 1484
25 into evidence.

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1 **MR. POMERANTZ:** No objection, Your Honor.

2 **THE COURT:** It's admitted.

3 (Trial Exhibit 1484 received in evidence.)

4 **MR. EVEN:** Thank you. So let's publish that.

5 **BY MR. EVEN:**

6 **Q.** And if you go to the bottom of page 3, Mr. Harrison, do
7 you see the first e-mail on the thread is from Mr. Phil
8 Harrison addressed to you?

9 **A.** I see that.

10 **Q.** And Mr. Harrison at the time was the executive at Google
11 who oversaw Stadia, the game streaming services that Google
12 shut down earlier this year I think; correct?

13 **A.** That's right.

14 **Q.** Now, continuing on page 4, Mr. Harrison wrote to you (as
15 read):

16 "Further to our discussion Friday, I've taken a stab
17 at a high-level strategic rationale for an investment in
18 Epic."

19 Do you see that?

20 **A.** I do.

21 **Q.** And near the end of his e-mail Mr. Harrison informed you
22 that he shared his views about the potential Epic acquisition
23 with Rick Osterloh, Google's senior vice president of devices
24 and services, and Mr. Osterloh, was, quote, "very supportive
25 while also recognizing that we're potentially buying at the top

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1 of the market"; is that right?

2 **A.** That is right.

3 **Q.** And "at the top of the market" here means that Google
4 would be acquiring Epic at a high price point; correct?

5 **A.** As a result of the success of Fortnite, yes. Yep.

6 **Q.** Now, the next e-mail in the thread that's on page 3 is
7 from Dave Sobota. It's 10:03 a.m. on July 16. Do you see
8 that?

9 **A.** I do.

10 **Q.** And in that e-mail, Mr. Sobota writes to you, that's three
11 paragraphs down (as read):

12 "As a potential alternative to the deal that
13 Mr. Rosenberg was working on, Phil" -- which is Phil
14 Harrison I believe -- "is proposing we consider
15 approaching Tencent to either (a) buy Epic shares from
16 Tencent to get more control over Epic or (b) join up with
17 Tencent to buy 100 percent of Epic."

18 Correct?

19 **A.** Correct.

20 **Q.** Then further down Mr. Sobota wrote to you that he had
21 proposed to Mr. Harrison, Phil Harrison, that Google could
22 approach Epic directly to see if a Google investment could help
23 with Jamie's negotiation; right?

24 **A.** He's outlining alternatives, yeah.

25 **Q.** And by Jamie's negotiations, Mr. Sobota was again

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1 referring to the potential Google-wide deal with Epic that
2 Mr. Rosenberg was trying to put together; correct?

3 A. Yes.

4 Q. Now, the top e-mail on this thread is from you to
5 Mr. Sobota and copying others. Do you see that?

6 A. I do.

7 Q. And you wrote (as read):

8 "We are bringing a package offering to BC on Thursday
9 re Epic."

10 Do you see that?

11 A. I do.

12 Q. And "BC" here is Business Council?

13 A. It is.

14 Q. And Mr. Rosenberg did, in fact, bring a package worth
15 north of \$200 million to the Business Council for formal
16 approval; correct?

17 A. I believe so, yeah.

18 Q. And then you wrote on the second sentence that you spoke
19 to Jamie and you, quote, "think we need a couple pages about
20 what investment could look like and someone there to discuss."

21 Do you see that?

22 A. I do.

23 Q. And so here you were proposing that in addition to the
24 Google-wide deal that Mr. Rosenberg was putting together,
25 somebody ought to be at the BC, at the Business Council, and

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1 present the investment idea with a couple of pages or slides;
2 correct?

3 **A.** To discuss the investment idea, yep.

4 **Q.** Then you said (as read):

5 "We just did a prep call and investment was the only
6 way people could realistically think of to sway them on
7 Epic's approach to Android."

8 Correct?

9 **A.** Yes. We didn't think the commercial options were going to
10 sway them on their approach to entry.

11 **Q.** Okay. And "them" here is Epic; correct?

12 **A.** Yep.

13 **Q.** So by sway them on Epic's approach to Android, you were
14 referring to changing Epic's decision to launch outside of
15 Google Play; correct?

16 **A.** That's correct.

17 **Q.** You can close out of this one, and turn to Exhibit 1485 in
18 your binder.

19 **A.** (Witness examines document.)

20 **Q.** Do you see that is a presentation titled "Project Electra"
21 dated July 2018?

22 **A.** I do see that.

23 **MR. EVEN:** Your Honor, I would like to move
24 Exhibit 1485 into evidence.

25 **MR. POMERANTZ:** No objection, Your Honor.

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1 **THE COURT:** All right. It's admitted.

2 (Trial Exhibit 1485 received in evidence.)

3 **MR. EVEN:** Thank you, Your Honor.

4 **BY MR. EVEN:**

5 **Q.** If you turn to page 3, Mr. Harrison, do you see there's an
6 executive summary slide?

7 **A.** I see that.

8 **Q.** And do you see that the presentation contemplates in the
9 second bullet point a large strategic investment into Epic
10 saying that it could help advance broader discussions about
11 using the Play Store for Fortnite? Do you see that?

12 **A.** I do see that.

13 **Q.** And if you turn to Slide 7, you see a slide about
14 preliminary investment considerations?

15 **A.** I do see that.

16 **Q.** And the first consideration listed here states that it
17 will require substantial investment to gain influence. Do you
18 see that?

19 **A.** I do.

20 **Q.** And "substantial investment" here means billions; right?

21 **A.** Yeah. We're going through strategic options. This
22 means -- yeah, the proposal here is billions of dollars of
23 investment.

24 **Q.** And the slide also states that anything short of control
25 stake will limit Google's ability to influence the company's

1 trajectory. Do you see that?

2 **A.** I do.

3 **Q.** And so what this is communicating is that if Google really
4 wanted to get Epic's attention and to align them on commercial
5 issues, meaning get them to launch on Play, Google would need
6 to invest a lot of money; correct?

7 **A.** Yeah. There's a bunch of things going on here. We're
8 arguing whether or not a small investment would influence or a
9 large investment would influence; and either way, we're
10 proposing an investment as a way to talk to Fortnite about
11 this -- or Epic about this.

12 **Q.** Okay. You can close out of 1485.

13 After Epic launched outside of Play, there came a time
14 when you got involved in Google's Hug deal with Activision
15 Blizzard King or ABK; correct?

16 **A.** Correct.

17 **Q.** And if you turn in your binder to Exhibit 8019, do you see
18 this is a December 16, 2019, e-mail you sent to Ruth Porat,
19 Philip Schindler, and others, titled "Activision Blizzard Deal
20 for December '19 Business Council Review"?

21 **A.** I see that.

22 **MR. EVEN:** Your Honor, I'd move to admit Exhibit 1819
23 into evidence.

24 **MR. POMERANTZ:** No objection, Your Honor.

25 8019?

HARRISON - DIRECT / EVEN

1 **MR. EVEN:** 8019.

2 **THE COURT:** It's admitted.

3 (Trial Exhibit 8019 received in evidence.)

4 **MR. EVEN:** Thank you, Your Honor.

5 **BY MR. EVEN:**

6 **Q.** Mr. Schindler and Ms. Porat, as we discussed, were
7 Google's chief business officer and chief financial officer at
8 the time; correct?

9 **A.** That's correct.

10 **Q.** Now, Mr. Schindler and Ms. Porat were both members of
11 Google Business Council at the time; right?

12 **A.** Yes, they are.

13 **Q.** And you sent this e-mail to Mr. Schindler and Ms. Porat
14 ahead of the Business Council meeting to advocate that they
15 should authorize a Project Hug agreement with ABK worth
16 \$360 million; correct?

17 **A.** I'm advocating for a large deal with Activision Blizzard
18 King, yep.

19 **Q.** Okay. Let's look at the e-mail and maybe that refreshes
20 your recollection about the amount.

21 So let's start at the top of the e-mail. You told
22 Mr. Schindler and Ms. Porat (as read):

23 "I wanted to send an update ahead of BC review on a
24 proposed deal with Activision Blizzard King, one of the
25 most important game publishers in the world."

HARRISON - DIRECT / EVEN

1 Do you see that?

2 **A.** I do.

3 **Q.** If you go three lines down, do you see that you say that
4 you, in the middle of the line, "wanted to share some numbers
5 with you ahead of time as well as go through the strategic
6 rationale"; correct?

7 **A.** That's correct.

8 **Q.** You then wrote three lines down further (as read):

9 "I think we need to do this deal. Too important to
10 Play and Cloud to let it go." Correct?

11 **A.** Yes, that's correct.

12 **Q.** And then you go into the next paragraph you say that --
13 you list several rationales for the deal, the first of which is
14 (as read):

15 "This would help solidify our Play relationship and
16 ABK's commitment to our platform."

17 Do you see that?

18 **A.** I do except it starts with "a large Cloud deal."

19 **Q.** Correct.

20 Now if you go down near the bottom of the page, you see
21 there's a table and it goes all the way to the second page.

22 Do you see that the heading of the table says that (as
23 read):

24 "Based on a projected run rate of 1 billion a year in
25 Play consumer spend, the estimated total investment from

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1 Google would be..."

2 Do you see that?

3 **A.** I do.

4 **Q.** And if you go to the second page under the total, you see
5 that the total is \$360 million; correct?

6 **A.** I do see that.

7 **Q.** Now, if you go to the top of page 3, the final page of
8 your e-mail, you wrote (as read):

9 "Risks of losing deal/competitive pressure."

10 Do you see that?

11 **A.** I do.

12 **Q.** And you told Mr. Schindler and Ms. Porat (as read):

13 "Without this deal, ABK claims they will launch their
14 own mobile distribution platform partnering with another
15 major mobile company."

16 Do you see that?

17 **A.** I do.

18 **Q.** And you characterized this as a risk because at the time
19 you believed this claim to be credible; right?

20 **A.** Yes. This is one of the risks of losing the deal, yes.
21 Yep.

22 **Q.** And you believed that the deal would eliminate or at least
23 mitigate that risk; correct?

24 **A.** Yeah. It's addressing all of the risks that are listed
25 below but, yes, that's one of the risks.

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1 Q. Now, Google, in fact, did enter into a Project Hug
2 agreement with ABK; correct?

3 A. We entered into an agreement, yes. Yep.

4 Q. And Google did, in fact, pay approximately \$360 million to
5 ABK under the deal; correct?

6 A. It's a much larger deal than that. There's billions of
7 dollars --

8 Q. It's even larger?

9 A. There's billions of dollars flowing between the two
10 companies.

11 Q. All right. And ABK has not, in fact, launched its own
12 mobile distribution platform on Android; correct?

13 A. I'm not aware of them having done that.

14 Q. That risk was eliminated?

15 A. The agreement has nothing about that.

16 Q. Sir, that risk was eliminated. It didn't happen; correct?

17 A. I have no idea whether it has to do with this deal. That
18 is --

19 Q. Sir, you identified it as a risk. That risk did not come
20 to fruition. It never happened; correct? They didn't launch?

21 A. Yes, I identified it as a risk and that risk did not
22 happen. It was not a subject of our agreement.

23 Q. If you can please close down 8019, and please turn to
24 Exhibit 1496, and I want to switch topics and talk a little bit
25 about Spotify now.

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1 Do you see that Exhibit 1496 is a presentation deck titled
2 "Modular Google Play Billing Pre-BC Review" dated July 2020?

3 **A.** I see that.

4 **Q.** And this deck was created for your review before
5 presentation to the Business Council; correct?

6 **A.** I'm not sure it was prepared for my review, but it was
7 prepared for review ahead of the Business Council.

8 **MR. EVEN:** Your Honor, Harrison transcript 410, 18 to
9 22, please.

10 (Pause in proceedings.)

11 **THE COURT:** Yes, that's fine.

12 **MR. EVEN:** Thank you.

13 If you please put this up.

14 **BY MR. EVEN:**

15 **Q.** You were deposed in this case, correct, Mr. Harrison?

16 **A.** I was.

17 **Q.** And at the time you were deposed, you were closer to the
18 events at issue here; right?

19 **A.** True.

20 **Q.** And you had better recollection than now?

21 **A.** Sure. Yes.

22 **Q.** So you can see that when you were deposed, you were asked
23 and answered under oath (as read):

24 **"QUESTION:** So it would be fair to say this deck is for
25 your review before presentation to the Business Council?

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1 **"ANSWER:** Yes. Yes. It would be fair to say that."

2 **A.** It was sent to me so, yes, that's fair.

3 **Q.** Okay.

4 **MR. EVEN:** At this point I would like to move to admit
5 Exhibit 1496 into evidence, Your Honor.

6 **MR. POMERANTZ:** No objection, Your Honor.

7 **THE COURT:** It's admitted.

8 (Trial Exhibit 1496 received in evidence.)

9 **MR. EVEN:** Thank you.

10 Let's publish.

11 **BY MR. EVEN:**

12 **Q.** And let's go to page 2, please, which is the executive
13 summary.

14 Do you see that page?

15 **A.** I do.

16 **Q.** Now, this slide is an executive summary of a potential
17 deal with Spotify. This is referring to play billing policy
18 change announcement; correct?

19 **A.** That's correct.

20 **Q.** And the announcement is the announcement that essentially
21 said everyone must use Google Play Billing; correct?

22 **A.** Yeah. It must comply with Google Play policies, yes.
23 Yeah.

24 **Q.** Now, do you see here that there's an ask of Don/Sameer;
25 right?

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1 A. That's right.

2 Q. And the "Don" would be you?

3 A. That would be me.

4 Q. And under that ask, it says that (as read):

5 "The team needs approval to proceed with a model that
6 breaks out the payment processing fee from other services
7 and then guidance on acceptable margin range."

8 Correct?

9 A. That's what it says, yes.

10 Q. Now, the recommendation on the slide includes splitting
11 Google's fees into two components; right?

12 A. That is correct.

13 Q. Now, one component it says (as read):

14 "One portion of the fee is tied to payment
15 processing."

16 And then in parentheses it says (as read):

17 "10 percent if Google processes payment, 0 percent if
18 Spotify processes."

19 Correct?

20 A. I see that, yep.

21 Q. And the second component would be a fee that is not tied
22 to payment processing to capture value that Play adds; correct?

23 A. Yep.

24 Q. And the fee that was proposed to capture the value that
25 Play adds and that is not tied to payment processing is

1 6 percent; correct?

2 **A.** Yes. This is a proposal to Spotify but, yes.

3 **Q.** That is what the proposal is, for a 6 percent fee for the
4 value that Play adds that's not tied to payment processing;
5 correct? That's what it says on the slide?

6 **A.** It does say that. This is a proposal to a business
7 partner, yeah.

8 **Q.** Let's go to page 5.

9 And on the top there's a chart that shows that proposal
10 with processing at either 0 or 10 depending on who performs the
11 payment processing, and then a service fee of 6 percent that is
12 not dependent on who does the payment processing; correct?

13 **A.** Correct.

14 **Q.** And the speaker notes then say under "Potential framing,"
15 quote (as read):

16 "Google will charge a service fee of 6 percent on all
17 transactions to reflect the value realized of operating
18 the platform, distribution, publishing, updating, loyalty,
19 and investing in the user experience for Spotify users."

20 Correct?

21 **A.** Correct.

22 **Q.** And it then says that (as read):

23 "We believe these fees represent value derived of
24 enabling Spotify to scale to over 2 billion users
25 effectively and driving new paying subscribers globally."

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1 Correct?

2 A. That's what it says, yes.

3 Q. Now, you would not have let this proposal crafted by your
4 team to go to the Business Council if it were not thought
5 through properly; correct?

6 A. That is correct.

7 Q. And "thought through properly" means that the proposal
8 must be data driven and careful; correct?

9 A. This is a proposal of a compromised offer to Spotify and,
10 yes, it should be thought through --

11 Q. It should be thought through --

12 A. -- and driven --

13 Q. -- and "thought through properly" means it must be data
14 driven and careful; correct?

15 A. Correct.

16 Q. And you did not have any objection to this assessment or
17 this proposal service fee of 6 percent going to the Business
18 Council; correct?

19 A. Yes, I was okay with this being presented to the Business
20 Council.

21 Q. You can -- and you know that, in fact, the ultimate deal
22 with Spotify gave Spotify better terms than what's in here;
23 correct?

24 A. Yes. Some different terms, but some better than this,
25 yep.

1 Q. You can put away 1496.

2 Another different topic. I want to talk about Apple now a
3 little bit.

4 In terms of the flow of funds and the value of the
5 commercial relationship to the parties, Apple is Google's
6 largest business partner; correct?

7 A. Yes.

8 Q. And you're the executive sponsor for Google's partnership
9 with Apple; right?

10 A. I am.

11 Q. And the term "executive sponsor" in this context means
12 that you are the key executive that interacts with Apple;
13 correct?

14 A. Yes.

15 Q. Now, Google monetizes its Search engine through
16 advertising; right?

17 A. Yes, it does.

18 Q. And Google and Apple have signed several commercial
19 agreements related to Google Search and advertising; correct?

20 A. Yes, we have.

21 Q. And under the current agreement between Google and Apple,
22 Google is required to pay Apple 40 percent of the revenue
23 generated from Google Search on Apple devices, including the
24 iPhone, subject to some deductions; correct?

25 A. Yes. We have a gross 40/net 36, yes.

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1 Q. That was my -- great. That's my next question.

2 Once you apply the deductions, you get to an actual
3 36 percent of revenue; correct?

4 A. That's correct.

5 Q. Now, Google pays this revenue share to Apple in exchange
6 for Apple's agreement to make Google Search the default Search
7 engine on all Apple devices, including the iPhone; correct?

8 A. Through Safari, yes. Yeah.

9 Q. And in 2021 when we last spoke at your deposition, the
10 annual payment Google made to Apple was somewhere between 12 to
11 \$14 billion a year; correct?

12 A. That's what I said then, yes.

13 Q. And by 2022, I think Mr. Pichai testified Google paid
14 Apple around \$18 billion a year; correct?

15 A. If that's what he testified, yes.

16 Q. You don't know that it's \$18 billion in 2022?

17 A. It's somewhere between; greater than 15, less than 20.

18 Q. Okay. Let's go with 18.

19 A. Sure.

20 Q. And doing some math, if \$18 billion was 36 percent of
21 Google's Search revenue on Apple devices in 2022, that means
22 that the total Search revenue on Apple devices in 2022 was
23 about 50 billion; correct?

24 A. That's fair, yes.

25 Q. And Apple and Google split that amount. 18 billion went

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1 to Apple and the other 32 went to Google; correct?

2 **A.** Yeah, that's correct.

3 **Q.** And 32 billion is a big chunk of change even for a company
4 Google's size; correct?

5 **A.** It is a large amount of revenue, yes.

6 **Q.** If you turn to Exhibit 1492 in your binder.

7 **A.** (Witness examines document.)

8 **Q.** And do you see this is the September 2016 agreement
9 between Google and Apple titled "Amendment to the Information
10 Services Agreement"?

11 **A.** I see that.

12 **MR. EVEN:** Your Honor, I'd like to admit Exhibit 1492
13 into evidence.

14 **MR. POMERANTZ:** No objection.

15 **THE COURT:** It's admitted.

16 (Trial Exhibit 1492 received in evidence.)

17 **BY MR. EVEN:**

18 **Q.** And if you turn to page 8, there is a Section 5 near the
19 top of this page titled "CEO Check-ins" with a subsection
20 titled "Annual CEO Check-in." Do you see that?

21 **A.** I do.

22 **Q.** And this term requires that at the end of each contract
23 year or earlier, if reasonably requested by a party, the CEOs
24 of Google and Apple will meet and review and discuss in good
25 faith the performance of the contract and upon request to

1 confirm each party's compliance with its terms; correct?

2 **A.** Correct.

3 **Q.** And the CEOs of Google and Apple do, in fact, meet from
4 time to time to discuss this agreement and other areas of
5 partnership within the company; correct?

6 **A.** I'm aware of them having met twice, perhaps three times
7 since we signed the contract.

8 **Q.** They meet annually; correct?

9 **A.** They don't -- the CEOs directly, they have not met
10 annually.

11 **Q.** Setting aside the pandemic, sir, they meet; correct?

12 **A.** They've met twice that I'm aware of. There may be a third
13 time that I'm not aware of.

14 **Q.** All right. Let's -- you can put away 1492, and let's talk
15 a little bit about that.

16 Before we get there, Google renewed its Revenue Share
17 Agreement with Apple most recently in 2021; is that right?

18 **A.** We did.

19 **Q.** And that amendment contemplates this agreement going
20 anywhere from 2026 to 2031, I believe; correct?

21 **A.** It depends on the international jurisdictions but, yes.

22 **Q.** All right. So turn to Exhibit 6190. 6190.

23 **A.** I see that.

24 **Q.** And this is a December 2018 e-mail thread including
25 yourself, Jerry Dischler and others titled "Re: Tim Briefing

1 Feedback." Do you see that?

2 A. I do.

3 MR. EVEN: Your Honor, I'd like to admit Exhibit 6190
4 into evidence at this point.

5 MR. POMERANTZ: No objection, Your Honor.

6 THE COURT: It's admitted.

7 (Trial Exhibit 6190 received in evidence.)

8 MR. EVEN: Thank you, Your Honor.

9 BY MR. EVEN:

10 Q. About halfway down the first page is an e-mail from you
11 dated December 20, 2018. Do you see that?

12 A. I do.

13 Q. And the e-mail reflects your summary of a meeting that you
14 attended among senior executives at Apple and Google; correct?

15 A. They reflect shared notes between me and an executive
16 named Peter Stern but, yes.

17 Q. Now, you said that the meeting had taken place last night
18 meaning, December 19, 2018; right?

19 A. Yes.

20 Q. You wrote in the first sentence -- well, first you write
21 to Mr. Walker, but then you write on the substance (as read):

22 "Very good conversation last time with Tim" -- "last
23 night with Tim, Eddy, Peter. Meeting lasted almost two
24 hours. Good tone and conversation. Becoming more open as
25 it progressed."

1 Correct?

2 A. Correct.

3 Q. And "Tim" here is Tim Cook, Apple's CEO; correct?

4 A. Correct.

5 Q. And Eddy and Peter are two other Apple executives, Eddy
6 Cue and Peter Stern; correct?

7 A. Correct.

8 Q. You wrote that you, Mr. Stern, and Mr. Cue participated
9 for the first hour or so and then Tim and Sundar met privately;
10 right?

11 A. Correct.

12 Q. And that, again, is Mr. Cook and Mr. Pichai?

13 A. Correct.

14 Q. Further down the same paragraph, about six or seven lines
15 down, you wrote (as read):

16 "Tim's overall message to Google was..."

17 And then you quote Tim Cook. Do you see that?

18 A. I do.

19 Q. And you said that he told you (as read):

20 "I imagine us being able to be deep, deep partners;
21 deeply connected where our services end and yours begin."

22 Correct?

23 A. Correct.

24 Q. And you then wrote that Mr. Cook communicated to Google in
25 the next sentence that (as read):

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1 "Despite some rocky times in the past, he 'doesn't
2 feel encumbered by it' and wants to figure out how we work
3 more deeply together."

4 Do you see that?

5 **A.** I do.

6 **Q.** Then you write after the quote from Mr. Cook ends (as
7 read):

8 "Very positive and I feel genuine on his part."

9 Right?

10 **A.** I did write that.

11 **Q.** You believed at the time that Apple was genuine in its
12 sentiment that Google and Apple should be deep, deep partners;
13 correct?

14 **A.** As Search partners, yes.

15 **Q.** Sir, you just wrote "deep, deep partners" and you wrote
16 that you're very positive "and I feel genuine." You felt
17 genuine -- genuinely that Apple was sincere in sentiment that
18 the parties should be deep, deep partners; correct?

19 **A.** The purpose of the meeting is to talk about our Search
20 distribution arrangement, and we were going to be deep partners
21 as Search --

22 **Q.** Sir, this is just talking about a meeting about deep, deep
23 partnership.

24 **A.** No.

25 **Q.** You say you're very positive "and I feel genuine on his

1 part"; correct?

2 **A.** No. This is a meeting to talk about our Search
3 distribution arrangement.

4 **Q.** Let's continue and see what this means.

5 In the next paragraph, that summarizes some things that
6 Mr. Pichai told Apple about the Search partnership; correct?

7 **A.** Correct.

8 **Q.** And the final sentence of this paragraph states (as read):

9 "Sundar also stated that you send us queries and we
10 do our best to answer these and monetize always in good
11 faith and because our incentives are aligned. Please
12 trust us."

13 Correct?

14 **A.** Correct.

15 **Q.** Now, turn to the next page, and under the "Notes" header,
16 your fourth note begins "We are aligned." Do you see that?

17 **A.** I do.

18 **Q.** And then you attribute something to Mr. Pichai. You say
19 (as read):

20 "Sundar: We would love to see the iPhone numbers
21 grow and will work in good faith to answer the queries you
22 send us."

23 Correct?

24 **A.** Correct.

25 **Q.** And one clear way for the iPhone numbers to grow is for

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1 there to be more iPhones; correct?

2 A. Correct. He's talking about search queries --

3 Q. Sir --

4 A. -- in this context, not iPhone numbers.

5 Q. Sir, your lawyer may ask you questions.

6 A. Okay.

7 Q. For now just answer mine.

8 Halfway down the page, there's a note that begins with
9 "Our vision"; correct?

10 A. Yes.

11 Q. And you wrote (as read):

12 "Our vision is that we work as if we are one
13 company."

14 Correct?

15 A. Correct.

16 Q. Working as one company is the opposite of competition;
17 right?

18 A. With respect to our Search distribution arrangement --

19 Q. I didn't ask with respect to what. It's a simple --

20 A. Sorry. You asked me a question.

21 Q. -- yes-or-no question.

22 Working with one company is the opposite of competition;
23 correct?

24 A. In the connection of our Search distribution arrangement,
25 we are partners.

1 Q. Sir, I'm not asking you about the context. I'm asking you
2 a simple question.

3 Working as one company is the opposite of competition;
4 correct?

5 A. Sure.

6 Q. You can close that down, and please turn in your binder to
7 Exhibit 1493.

8 This is a March 2020 document titled "Apple Partnership
9 Strategy Internal Briefing Document." Do you see that?

10 A. I do.

11 MR. EVEN: Your Honor, I'd move to admit Exhibit 1493
12 into evidence at this point.

13 MR. POMERANTZ: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (Trial Exhibit 1493 received in evidence.)

16 BY MR. EVEN:

17 Q. Towards the bottom of the first page is a header titled
18 "Priority Relationship Issues." Do you see that?

19 A. I do.

20 Q. And if you turn to the next page, you see there are
21 several bullet points. The second-to-last priority
22 relationship issue is "IOS in-app purchase payment policy." Do
23 you see that?

24 A. I do.

25 Q. And the issue that Google reports here is that, quote (as

1 read):

2 "Apple requires that IOS apps use Apple's payment
3 platform and provide Apple with a 15 to 30 percent
4 recurring service fee."

5 Correct?

6 **A.** Correct.

7 **Q.** And that is, in fact, Apple's policy on in-app purchases;
8 correct?

9 **A.** I believe so.

10 **Q.** And the document then refers to Apple's fee of 15 to
11 30 percent as steep in-app purchase rev share terms; correct?

12 **A.** Yeah. Our YouTube team perceived it that way, yes.

13 **Q.** That's what the document says, that the 15 to 30 percent
14 is a steep rev share term; correct?

15 **A.** Again, it's capturing YouTube's perspective, but, yes,
16 that's what it says.

17 **Q.** I agree, it captures YouTube's perspective.

18 **A.** Yep.

19 **Q.** And YouTube then says (as read):

20 "YouTube TV began disabling purchases of new
21 subscriptions via Apple's in-app payment solution because
22 of that steep rev share."

23 Correct?

24 **A.** Correct.

25 **Q.** And the view that is expressed here is that when Google is

1 the one that has to pay 15 to 30 percent processing for in-app
2 purchases, Google views a 15 to 30 percent revenue share on
3 in-app purchases of digital content as steep; correct?

4 **A.** No, that's not correct. YouTube has its own P&L.

5 **Q.** Sir, is it correct or not correct?

6 **A.** It's correct from YouTube's perspective, yes.

7 **Q.** It's correct from YouTube's perspective --

8 **A.** Yep.

9 **Q.** -- I see.

10 Okay. And you understand that YouTube's perspective is
11 that this 15 to 30 percent revenue share is for processing of
12 in-app purchases; correct? That's what they say?

13 **A.** Yeah, correct.

14 **Q.** Now, please go back to the top of the first page. Do you
15 see there's something that says "Relationship Summary"?

16 **A.** I see that.

17 **Q.** And the document then states that (as read):

18 "The Apple/Google relationship is predominantly
19 amicable across Search, YouTube, Cloud, Ads, and Corporate
20 Engineering."

21 Correct?

22 **A.** Yes.

23 **Q.** The second paragraph states that (as read):

24 "The fairly positive relationship with Apple is
25 grounded in the Search agreement and subsequent strong

1 top-to-top engagement."

2 Correct?

3 **A.** Correct.

4 **Q.** And this is a reference to the agreement we just saw where
5 Apple pays -- sorry -- Google pays Apple billions of dollars
6 each year to make Google Search the default on Apple devices;
7 correct?

8 **A.** Correct.

9 **Q.** And the strong top-to-top engagement that creates a
10 positive relationship, that's a reference to the meeting
11 between CEOs and other executives; correct?

12 **A.** Correct.

13 **Q.** Then the document states that (as read):

14 "Apple could pose a significant risk if these were
15 not in place."

16 Do you see that?

17 **A.** I do.

18 **Q.** And the document lists three risks, the first of which is
19 Apple's ability to, quote, "close its ecosystem to Google entry
20 points and services"; correct?

21 **A.** Correct.

22 **Q.** Now, closing Google's entry points and services on IOS is
23 an important -- is important to Google because Google very long
24 ago made a strategic decision to make its services available to
25 IOS users; correct?

1 A. Correct.

2 Q. If you turn to page 5, at the top of this page is a table
3 called "Relationship Map" that spans several pages. Do you see
4 that?

5 A. I do.

6 Q. And the relationship maps reflects 18 or 19 areas in which
7 Google partners with Apple; correct?

8 A. Correct.

9 Q. And this is not limited to Search; correct?

10 A. Correct.

11 Q. For example, if we look at the first page, you partner
12 with Apple in three different kinds of advertising spaces;
13 correct?

14 A. Correct.

15 Q. You partner with Apple on Cloud; correct?

16 A. Correct.

17 Q. The next page, you partner with Apple in, for instance,
18 developer relations; right?

19 A. Correct.

20 Q. And you see under "developer relations" it says that (as
21 read):

22 "Google has around 100 apps published on the IOS app
23 store, including three of the top 10 IOS nonnative apps by
24 monthly active users."

25 Correct?

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1 A. Correct.

2 Q. Going further down, you partner with Apple in device and
3 services or hardware; correct?

4 A. Correct.

5 Q. You partner with Apple in payments; correct?

6 A. Correct.

7 Q. Go on to the next page, you partner with Apple on Search
8 and on Waze and on YouTube; correct?

9 A. Correct.

10 Q. If you turn to page 8, this page and the following page
11 contain a chart that lists over a dozen top Apple executives,
12 and next to each one there is a Google top executive that's the
13 direct point of contact; correct?

14 A. Correct.

15 Q. This list includes the CEO of Google and Apple, as well as
16 yourself; correct?

17 A. Correct.

18 Q. And it includes senior leaders of both companies in legal,
19 engineering, finance, people operations, marketing, et cetera;
20 correct?

21 A. Yeah. Many of these are not active conversations but,
22 yes.

23 Q. Sir, it's a simple question.

24 A. Yep.

25 Q. It includes all these people from engineering, legal,

1 finance, people operations, marketing, Cloud, et cetera;
2 correct?

3 **A.** Yeah. It's lining up their executives and our executives,
4 yes.

5 **Q.** Now, your job as head of partnerships is to make sure
6 Google is constantly aware of all the points of connection
7 between Google and Apple; correct?

8 **A.** Yeah. We try, yes.

9 **Q.** And if you're doing your job correctly, when making a
10 decision on the competitive side, you are considering the
11 relationship between the two companies holistically; correct?

12 **A.** Yeah. I'm considering the areas where we partner.

13 **Q.** Sir, it's a yes or no. You are considering them
14 holistically; correct?

15 **A.** I do.

16 **Q.** And that means that when you make a decision on the
17 competitive side, you need to consider how it will affect all
18 of the points of connection between Google and Apple, including
19 the partnerships that are worth over \$50 billion of revenue
20 each year to Google; correct?

21 **A.** Yes, correct.

22 **MR. EVEN:** I pass the witness.

23 **THE COURT:** Okay.

24 **MR. SIDNEY:** May I approach?

25 \\\

CROSS-EXAMINATION

BY MR. POMERANTZ:

Q. Good morning, Mr. Harrison.

A. Good morning.

Q. So you said your position at Google is to be president of global partnerships and corporate development; correct?

A. Correct.

Q. Do the partners that you work with do business with various parts of Google?

A. They do.

Q. Could you give the jury a couple of examples of the kinds of partners you work with who do business with various parts of Google?

A. Sure. There's two quick examples. One is Ford and the other is Disney. With Ford we have a number of relationships. They are Cloud partners, so these are Cloud services. They advertise, so they work with our advertising divisions. They have connections with YouTube and they have connections with our Android team because we provide a software that works in cars.

Disney we have a broad relationship with. They're also a Cloud partner. They use advertising obviously to drive attention to Disney products. They distribute apps through our Play Store, and we work closely -- we work closely with Disney across the board, but YouTube as well has significant

1 connections with Disney.

2 Q. And does your work, your group's work, involve working
3 with these partners in all of these different business areas?

4 A. Yes.

5 Q. All right. Let's talk about Activision.

6 Is Activision one of the partners that you and your group
7 work with?

8 A. Yes.

9 Q. And does Activision do business with more than one part of
10 Google?

11 A. It does, yes.

12 Q. Could you describe to the jury what the different parts of
13 Google are that work with Activision?

14 A. So Activision has -- is probably our most significant
15 Cloud partner on the gaming side, meaning they use our Cloud
16 services to distribute their games, mostly Call of Duty.

17 They work closely with our Play team because they
18 distribute mobile apps through Android.

19 They drive a ton of interest in their games through
20 advertising, and so work closely with our advertising group.

21 And then you can watch YouTube content, gaming content,
22 on -- ABK content on YouTube, and so they're a partner of
23 YouTube as well.

24 Q. Now, counsel asked you about your involvement in an
25 agreement between Google and Activision relating to

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1 Project Hug. Do you remember that?

2 A. I do.

3 Q. Did you talk directly with someone at Activision about
4 that agreement?

5 A. Yeah. I mostly spoke with an executive named Armin Zerza.

6 Q. And what is Mr. Zerza's position at Activision?

7 A. He's had two positions. I think at the time he was chief
8 business officer, but then he became chief operating officer.

9 Q. And when you were talking with Mr. Zerza, what were your
10 goals in terms of an agreement between Google and Activision?

11 A. I mean, we were trying to structure a very broad deal. I
12 very much wanted to bring them in as a keystone Cloud partner.
13 You know, gaming -- having a gaming company like that working
14 with our Cloud system was hugely important. They're obviously
15 a very large advertising partner, and so making them happy as
16 an advertising partner was something I was focused on.

17 We were focused on Play and making sure that they complied
18 with Play policies and YouTube. There was an opportunity where
19 they were distributing Overwatches and Esports League, and
20 YouTube was interested in sponsoring that and so we brought
21 that into the deal.

22 Q. Did you believe that having the gaming apps that
23 Activision offered, was that important to Play?

24 A. Yes, it was.

25 Q. Was that part of the negotiations here?

1 **A.** It was, yeah.

2 **Q.** Now, did Mr. Zerza tell you anything about what
3 Activision's goals were in this negotiation?

4 **A.** The main -- I think the main thing that Armin was focused
5 on was getting value for the ad dollars that they were
6 spending. Obviously driving adoption of their gaming apps is
7 something that's hugely important to EA; and that getting as
8 much credit as they could for the spend that they were either
9 doing through Cloud or through Play or through ads was very
10 important to them.

11 **Q.** All right. And did the final deal that Google and
12 Activision reached here, did it accomplish the goals of Google
13 and Activision from your perspective?

14 **A.** Yeah. From my perspective it solidified an important
15 partner across four different product areas, and I think
16 from -- you know, no one is entirely happy with the deal at the
17 end of the day; but from Activision's perspective, they were
18 able to get value for the advertising dollars that they were
19 putting to work.

20 **Q.** All right. So let's look at Exhibit 8019, and if we can
21 bring -- this is one that counsel showed you.

22 And counsel pointed you to the first half of the first
23 sentence. If we can bring the whole first sentence up.

24 And I wanted to focus on the whole sentence. So the
25 sentence reads (as read):

1 "I wanted to send an update ahead of BC review on a
2 proposed deal with Activision King Blizzard" -- ABK --
3 "one of the most important game publishers in the world,
4 and" --

5 **A.** I apologize. It's not coming up on my monitor. I can do
6 it here, but is it --

7 **Q.** Okay. Maybe if you touch -- I think before we've had it
8 where if somebody touches the monitor, it wakes it up. Does
9 that... No?

10 **A.** No, but I can work with this.

11 **Q.** All right. So you --

12 **A.** Yes, it came up. There's an out of range and then it came
13 up.

14 **Q.** The magic of technology.

15 **A.** It's good.

16 **Q.** All right. So I'm going to focus on the first sentence,
17 and the last half of that first sentence says (as read):

18 "... and a key partner across YT and Play and
19 hopefully Cloud and Stadia."

20 What was that? What did that portion of the sentence
21 refer to?

22 **A.** Sure. The whole -- all four do you want me to talk about
23 or just the parenthetical?

24 **Q.** "And a key partner." Starting from "and a key partner."
25 The part that wasn't read in your examination by Epic's

1 counsel.

2 **A.** Yeah. So, again, for YouTube it was talking about Esports
3 and the position of Esports on YouTube content. Esports is
4 very important to Activision. Play, again trying to provide
5 for the distribution of their applications across Play.

6 Most importantly we wanted to make sure that they were
7 offering their applications the same way that they offered them
8 across other platforms, particularly IOS.

9 Cloud, we were trying to negotiate one of the largest
10 Cloud agreements we'd done with a gaming partner. And Stadia
11 at the time was our video game. It was going to be a Cloud
12 streaming game that allowed you to play very simply without a
13 console, just a television and a controller. And having
14 Activision's games on Stadia would have been hugely important
15 to us, particularly Call of Duty.

16 **Q.** All right. And so at the end of the day, you negotiated a
17 deal where Google got certain things and gave certain things;
18 correct?

19 **A.** Correct.

20 **Q.** So let's look at the gets and gives, which are down at the
21 bottom of the first page.

22 And you see there there's a heading that says "What Google
23 Gets" and then there's another heading that says "What Google
24 Gives." Do you see that?

25 **A.** I do.

1 Q. So let's start with what Google gave, the gives, let's
2 start at the bottom part.

3 Can you go through each of these line items and explain to
4 the jury, what was Google giving to Activision in this deal?

5 A. Sure. So we were giving as part of, you know, a series of
6 commitments around spend, meaning how much either revenue they
7 would drive through our properties or how much they would
8 actually spend directly with us to engage our services like
9 Cloud, we were willing to give them Play credits, which is
10 GC -- what are called GCP credits, but these are Google Cloud
11 credits that they would earn as a result of Play spend.

12 The second is what are called UAC matching credits. This
13 is universal ad campaigns. So this would be credits that they
14 could use towards universal ad campaigns based on how much they
15 spend on universal ad campaigns. So essentially if they
16 advertised up to a certain level, we would give them additional
17 dollars to advertise more.

18 Co-marketing funds deals with their ability to co-market
19 their titles together with us across Play and broader surfaces.

20 And then Esports licensing is about us licensing their
21 content for Esports so we can deliver it through YouTube.

22 Q. All right. And so now let's go back up to what Google
23 gets, and let's start with the first bullet which is "Continued
24 Play Partnership," and you see that term says "Continued Play
25 partnership for ABK titles at current rev share," and then it

1 goes on says "Standard Hug developer obligations (sim-ship,
2 title parity, and quality."

3 Can you explain to the jury what the obligations were that
4 Google was getting from Activision that relate to Play?

5 **A.** Sure. In this, what we're talking about here is it's very
6 important for Play that if they -- if they ship titles -- and
7 we have a huge issue because developers generally want to
8 develop for Apple first. They recognize that Apple is
9 obviously a very good platform with customers that are willing
10 to spend money to buy very good phones; and we want to make
11 sure that when they deliver a title through Apple, that they
12 deliver a similar quality title through our store.

13 And so "sim-ship" means that they will commit to deliver
14 it at the same time. So if they're delivering a new version of
15 Call of Duty on Apple, they will deliver -- or on any store,
16 they will deliver at the same time through our Play Store.

17 Title parity is just making sure that, you know, it's the
18 same titles because they have different versions of the same
19 games.

20 And then quality is to make sure because there's all sorts
21 of feature sets that are embedded in the games, that they're of
22 the same quality regardless whether you play through Play,
23 another app store, or Apple.

24 **Q.** So did the agreement with Activision relating to Play
25 obligate Activision to give games to the Play Store earlier

1 than it gave it to any other store?

2 **A.** No. They just had to give it to us at the same time.

3 **Q.** And was there anything exclusive about it? That is, could
4 Activision give its games to Apple or to the Samsung Galaxy
5 Store or anybody else at the same time it gave it to Play?

6 **A.** Yeah. They could go direct. They could give it to
7 another Play Store, like Samsung, or they could deliver it to
8 Apple. They just had to deliver it to us at the same time.

9 **Q.** Okay. And then just briefly, if you could, go through the
10 remaining gets for Google in this deal starting with the Cloud
11 commitment.

12 **A.** So \$200 million Cloud commit over three to four years, so
13 this is a large Cloud commit focused on a gaming experience.
14 They are agreeing to drive a lot of advertising, which is UAC,
15 again universal ad campaigns, ad spend. And then they get
16 what's called \$115 million a year DVIP. DVIP is just an
17 ads-intensive program. It's, you know, something we give to
18 large advertisers which allows you to advertise more based on
19 the dollars that you've advertised.

20 We have the exclusive Esports distribution license for
21 YouTube, which I talked about previously.

22 And then there's a commitment to partner on Stadia, which
23 was our gaming -- our streaming gaming application that we were
24 trying to develop.

25 **Q.** Okay. Now, this document lays out certain gets and gives

1 that are part of the deal.

2 Do most deals involve gets and gives?

3 **A.** Yeah. I would say all deals involve gets and gives.

4 **Q.** And in your experience, does either side get everything
5 that it wants?

6 **A.** No. A good deal is where neither side is entirely happy
7 with -- they get some of what they want and we get some of what
8 they want, and we compromise in the middle.

9 **Q.** Now, in this deal, did Google get everything that it
10 wanted?

11 **A.** No, we didn't.

12 **Q.** And in this deal, did Activision get everything that it
13 asked for?

14 **A.** No, they didn't.

15 **Q.** But you did eventually reach an agreement; correct?

16 **A.** We did.

17 **Q.** So that agreement has been previously marked as
18 Exhibit 153. I think that is in your binder. And if you could
19 just take a quick look at the first page. Let's take a look
20 and make sure that this is the agreement that ultimately
21 resulted from the negotiations in the document that we were
22 just looking at.

23 **A.** Yeah, this is the agreement.

24 **Q.** All right. Is there anything in this agreement that would
25 prevent Activision from opening up a new Android app store the

1 day after they signed this agreement?

2 **A.** No.

3 **Q.** And was there any oral agreement or implied agreement that
4 would prohibit Activision from opening up a competing app
5 store?

6 **A.** No.

7 **Q.** Is Activision free today to open up an app store if that's
8 what it wants do?

9 **A.** Yeah. They were free when we signed the deal. They're
10 free today.

11 **Q.** All right. Let's go to Spotify.

12 Now --

13 **THE COURT:** Before we do, if I may, so we've been
14 saying Activision -- you've been saying Activision and ABK.
15 That's referring to the same company; right.

16 **THE WITNESS:** Yeah. Activision Blizzard King. So
17 they acquired Blizzard, which makes League of Legends -- no,
18 no. Blizzard makes World of Warcraft, sorry, and King which
19 does mobile games.

20 **THE COURT:** Okay. But it's one and the same company?

21 **THE WITNESS:** It's the same company.

22 **THE COURT:** Okay. I'm just going to say "ABK." Okay?

23 **THE WITNESS:** I say "ABK" too.

24 **THE COURT:** All right. Does Google compete with ABK
25 in any way?

1 **THE WITNESS:** If we had launched Stadia, we would have
2 been competitive with them, but we didn't launch Stadia at the
3 end of the day.

4 There -- no, as a gaming company, they're mostly a
5 partner. I'm sure there are areas where we compete a little
6 bit, but I'm having a hard time thinking of an example.

7 They have -- you can advertise through their platform, so
8 we would compete for advertising dollars.

9 **THE COURT:** All right. But as you think of ABK, do
10 you think of them as a competitor in the way you said you think
11 about Apple?

12 **THE WITNESS:** No. I think ABK is mostly a partner.

13 **THE COURT:** Okay. Thank you.

14 Okay. Go ahead.

15 **BY MR. POMERANTZ:**

16 **Q.** Let's turn to Spotify.

17 So counsel showed you Exhibit 1496, and if we could put
18 the first page of 1496 up on the screen.

19 So this is dated July 27, 2020. Did Google reach an
20 agreement with Spotify in 2020?

21 **A.** It did not.

22 **Q.** And so the proposed deal that's discussed in this
23 document, did you ever reach that deal?

24 **A.** No, we didn't.

25 **Q.** Okay. Now, in this deck, Slide 2 -- if we can put Slide 2

1 on the screen -- counsel pointed you to the 6 percent fee down
2 at the last bullet point on this page.

3 Was that 6 percent fee intended to reflect the actual
4 value of Android?

5 **A.** No, it wasn't.

6 **Q.** And was that fee intended to reflect the actual value of
7 Play?

8 **A.** No, it wasn't.

9 **Q.** What was that 6 percent fee intended to reflect?

10 **A.** We are trying to convince Spotify, which is a very
11 important application and experience, essentially you can't
12 sell Android phones without Spotify being able to work well on
13 our surfaces, and so we're trying to convince Spotify to, you
14 know, come into compliance with Google Play Billing policies,
15 and this was a proposal to try to convince them to do that.

16 **Q.** All right. And now two years later Google did reach an
17 agreement with Spotify; correct?

18 **A.** We did.

19 **Q.** That was in 2022; correct?

20 **A.** That's correct.

21 **Q.** All right. So let me put on the screen Exhibit 1530.

22 And this is the BC summary of that deal; correct?

23 **A.** Correct.

24 **Q.** All right. And I want to focus you on the ask on page 2
25 of this agreement -- of this document.

1 And you see -- if you can bring up -- no, I'm sorry, not
2 that one. The ask. Up a little higher. Right there.

3 And I want to focus you on the second sentence, the one
4 that begins "The reason."

5 Could you read that sentence out loud to the jury?

6 **A.** Sure. (as read):

7 "The reason we are proposing this bespoke deal with
8 Spotify is because of its unprecedented position and
9 bargaining power in the market, and we had to offer a
10 creative solution to bring their full value to the Play
11 ecosystem."

12 **Q.** So what did you understand this document to mean when it
13 says "the unprecedented position and bargaining power of
14 Spotify"?

15 **A.** It's related to what I was saying before, but they are --
16 they are a unique -- people use phones for a number of core
17 purposes, but listening to music is one of those core purposes.
18 If we don't have Spotify working properly across Play surfaces
19 and Android surfaces, people will not buy Android phones.

20 And Spotify is unique in the sense that they are probably
21 one of the most important music applications in the world; and
22 as a result of that, they do have unprecedented position and
23 bargaining power.

24 **Q.** All right. Now, the jury had previously seen various
25 service fee rates that were part of this deal, and they saw

1 that on a piece of paper that was handed to them. In addition
2 to those service fees that get paid under this deal, was there
3 something called a success fund?

4 **A.** There was.

5 **Q.** And could you explain to the jury what the commitments
6 were of the success fund?

7 **A.** Sure. So as part of the deal we had tried to structure in
8 2022, we wanted them to visibly commit to the Android ecosystem
9 and show the value of the Android ecosystem, and so we entered
10 into what we called the success fund with them where we both
11 agreed to contribute to dollars that would promote the Android
12 ecosystem.

13 **Q.** And so under this agreement, did both parties agree to
14 commit tens of millions of dollars to the success fund?

15 **A.** We did. I think both parties agreed to commit 50 million
16 to the success fund.

17 **Q.** All right. And, again, that was to -- for Spotify, it was
18 to promote both Spotify and Android, and for Google it was to
19 promote both Spotify and Android; correct?

20 **A.** Correct. They would promote good experiences that showed
21 that Android phones were a great place to listen to music. And
22 then, you know, we wanted it to work across other Android
23 experiences, like watches, and so they agreed to cooperate with
24 us to promote those experiences as well.

25 **Q.** All right. And do you think it's essential for Spotify to

1 be offered in the Play Store?

2 **A.** Yes, I do.

3 **Q.** Why?

4 **A.** Because -- because if you cannot access what is probably
5 the most important music application in the world, then people
6 will not buy Android phones.

7 **Q.** All right. Let's -- you can put that one down, and let's
8 now talk about Apple.

9 Counsel showed you an exhibit, Exhibit 6190. If we could
10 put that one up on the screen.

11 All right. And these are notes of a meeting that you
12 attended with Mr. Pichai, Mr. Cook of Apple, and a couple other
13 Apple executives; correct?

14 **A.** Correct.

15 **Q.** What led to that meeting?

16 **A.** We realized we hadn't met in a number of years. We do
17 have a difficult relationship over the years, and we decided it
18 was the right time to try to get the CEOs to meet with each
19 other.

20 **Q.** And was there any concern expressed before the meeting
21 about what was going on with search results on the iPhone and
22 other Apple devices?

23 **A.** Yeah. We had spent about a year. There were two quarters
24 where revenue coming through search queries on Safari were
25 starting to level off. They weren't growing as quickly, and

1 particularly they weren't necessarily growing as quickly as
2 other parts of the mobile ecosystem, and so Apple through their
3 executive Peter Stern had flagged that to us.

4 And we had spent several quarters working through that
5 financial information with Apple to try to get them comfortable
6 that the reasons for the lack of growth were not something
7 specific to Apple but were generally per-system issues or
8 general revenue issues.

9 That had been a tense conversation over several quarters,
10 and we had gotten to a point where we seemed to be on a common
11 page but we felt that the CEOs needed to meet to go over that
12 revenue performance.

13 **Q.** All right. So if we could go to the bottom of the first
14 page and bring up the paragraph that begins "In turn." And
15 let's highlight the last sentence beginning with the same
16 "Sundar."

17 Now, counsel asked you about this sentence, and it says
18 (as read):

19 "Sundar also strongly stated that you send us queries
20 and we do our best to answer these."

21 Do you see that?

22 **A.** I do.

23 **Q.** What are queries?

24 **A.** Queries are the words that you put into Google or into a
25 Safari, a browser Chrome bar, the top part of the bar where you

1 ask it a question. You know, who is the president of the
2 United States? That is a query.

3 Q. And is that part of the search function that Google was
4 providing to Apple under this agreement?

5 A. It was.

6 Q. And so was this entirely about Search?

7 A. It was.

8 Q. All right. Let's go to the next page, and you see a
9 heading "Notes." Can we.

10 Bring up that whole section?

11 So are these the notes that you and Mr. Stern put together
12 to summarize what -- you know, at least paraphrase what
13 happened at the meeting?

14 A. Yes.

15 Q. All right. And I want to focus on the entries on this --
16 these notes that refer to either search or queries. So if I
17 could show you those.

18 So is it fair to say that the focus of this meeting was
19 About Search?

20 A. Yeah, the entire meeting was about Search and Search
21 performance.

22 Q. And do these notes say anything at all about Play?

23 A. No.

24 Q. Did anyone mention Play in this meeting?

25 A. No.

1 Q. Did anyone mention the Apple App Store in this meeting?

2 A. No.

3 Q. Okay. You can take that down.

4 Now, do you recall that this revenue sharing agreement
5 that Google has with Apple relating to Search, do you recall
6 that it began in 2002?

7 A. I do.

8 Q. So I want to look at some of the things that have happened
9 since 2002.

10 What is Google Pixel?

11 A. Google Pixel is our phone that we design and build and
12 market and sell directly.

13 Q. And when did Google launch the Pixel?

14 A. About six or seven years ago.

15 Q. And does the Pixel compete directly with the iPhone?

16 A. It does. Premium Pixel competes head to head with the
17 iPhone.

18 Q. So a consumer can either choose the Pixel or they can
19 choose the iPhone?

20 A. They can.

21 Q. Now, did Google's agreement with Apple to share Search
22 revenue, did it stop Google from launching the Pixel to
23 directly compete with the iPhone?

24 A. No.

25 Q. Do Google and Apple act as one company when it comes to

1 the Pixel and the iPhone?

2 A. No.

3 Q. Well, let's talk about another product. Have you heard of
4 something called YouTube Music?

5 A. I have.

6 Q. When was that launched?

7 A. YouTube Music started as Play Music. I think it became
8 YouTube Music about two or three or four years ago, but it is
9 our music property that we offer through YouTube.

10 Q. All right. And it launched while there was a Revenue
11 Share Agreement relating to Search between Google and Apple;
12 correct?

13 A. Correct.

14 Q. Does Apple offer a competing music service?

15 A. It does.

16 Q. And what is its competing music service called?

17 A. Apple Music.

18 Q. Are they both available in the Play Store?

19 A. They are.

20 Q. And are they both available in the Apple App Store?

21 A. They are.

22 Q. And does Apple Music and YouTube Music compete head to
23 head?

24 A. They compete directly.

25 Q. Do Google and Apple act as one company when it comes to

1 YouTube Music and Apple Music?

2 **A.** No.

3 **Q.** What is Google Maps?

4 **A.** Google Maps is our map infrastructure that not only shows
5 you where you are, but people use it for driving directions and
6 navigation directions.

7 **Q.** And does Apple offer a competing app -- map app?

8 **A.** It does. It offers Apple Maps.

9 **Q.** We heard some testimony earlier in this case about
10 messaging and blue bubbles and green bubbles. Can you describe
11 that situation to the jury briefly? They've already heard a
12 little bit about it, so just briefly.

13 **A.** Yeah. So Apple has iMessage, which is an extremely
14 popular messaging service. Android also has both text-based
15 messaging but a messaging service. If you use an Android
16 phone, which is why I can't convince my kids to use an Android
17 phone, if you are on Apple, you will see that appears as a
18 series of different color balloons and its very difficult to
19 share images and videos, and so they don't work very well
20 together.

21 **Q.** Do Google and Apple compete when it comes to messaging?

22 **A.** We do.

23 **Q.** Now, you recall that Apple launched the Apple App Store
24 back around 2008? Do you recall that?

25 **A.** I do.

1 Q. And do you recall that Google then shortly thereafter
2 launched a store that it called Android Market? Do you
3 remember that?

4 A. I do.

5 Q. And then Android Market was later rebranded as Play. Do
6 you recall that?

7 A. I do.

8 Q. Has Google and Apple ever worked together as one company
9 when it comes to Google Play and the Apple App Store?

10 A. No. We compete directly.

11 Q. And do Google and Apple work together as one company when
12 they're trying to sell Android phones as against iPhones?

13 A. No. We're directly competitive.

14 Q. And do Google and Apple work together as one company in
15 trying to convince developers to launch their new apps first in
16 their store?

17 A. No. We compete directly.

18 Q. So is it fair to say that Google and Apple compete in many
19 ways?

20 A. Yes.

21 Q. And is it also fair to say that they work together in
22 other ways?

23 A. Yes.

24 Q. All right. Let's talk about that Revenue Sharing
25 Agreement for Search between Apple and Google.

1 That only relates to Search revenue; correct?

2 A. Correct.

3 Q. Does it relate to revenue sharing of Play?

4 A. No.

5 Q. Does it have anything to do with Play revenue?

6 A. No.

7 Q. Have you ever heard anyone at Google say "We better not
8 compete hard against Apple because of the Search revenue"?

9 A. No.

10 Q. All right. Let's put up Exhibit 1493, another document
11 that counsel showed you.

12 Counsel pointed you to -- first of all, let's make sure we
13 get what this document is.

14 You lead Google's partnership group; correct?

15 A. That's correct.

16 Q. And that's the group that focuses on areas where you
17 partner with another company; correct?

18 A. Yep, that is correct.

19 Q. Did your group create this document called "Apple
20 Partnership Strategy"?

21 A. It did.

22 Q. And what was the purpose of this document?

23 A. The purpose of this document is to find areas where we're
24 able to partner and grow the relationship between Apple and
25 Google. It doesn't deal with the parts where we compete.

1 Q. All right. So it doesn't deal, for example, like how
2 Google Maps and Apple Maps compete; correct?

3 A. This doesn't have our hardware strategy. It doesn't have
4 our Android strategy. It only focuses on the area where we can
5 promote partnership.

6 Q. And would another part of the company have documents
7 talking about how these various competitive products interact
8 and the strategy for that competition?

9 A. Yes. Our hardware team would have a document that maps
10 out how Pixel and iPhone are going to be sold against each
11 other. Our Android team would have documents that talk about
12 their strategy to grow Android and switch people from iPhone.

13 Q. And that's not what your group does?

14 A. That wouldn't be what my group does, no.

15 Q. All right. So let's focus on the first sentence here.
16 Counsel highlighted it for you.

17 Just the very first sentence, Phil.

18 So you see there that it lists a bunch of different
19 product areas where Google and Apple work together. Do you see
20 that?

21 A. I do.

22 Q. Now, do you see Play in that list?

23 A. No.

24 Q. Do you see Android in that list?

25 A. Nope.

1 Q. Would you describe the relationship that Play and the
2 Apple App Store or Android and IOS have as amicable?

3 A. No. They're competitive. They're not -- they're not
4 areas where we can partner.

5 Q. All right. Now let's go to the portion that counsel
6 showed you on the next page that deals with YouTube, the IOS
7 in-app purchase.

8 If we could just bring that back up.

9 If a developer -- now, what you understand is that YouTube
10 is not currently using Apple's in-app billing system; correct?

11 A. That's my understanding, yep.

12 Q. So if a developer like YouTube doesn't want to pay the
13 service fee that Apple or Google Play charge, can it go
14 consumption only?

15 A. It can.

16 Q. What is consumption only?

17 A. Yeah, so every application comes from a specific industry
18 with its own -- with its own costs and its own ability to make
19 margin or to generate profit.

20 Consumption only is the experience I think most of us have
21 with Netflix where you both subscribe and buy new features on
22 the website, and then you only would use your mobile phone to
23 watch.

24 Consumption only is where you're expected to go to the
25 website and subscribe, buy new features, but you can only watch

1 it on your phone. You can't do any of those things like buy a
2 new subscription or enable a new feature through your phone.

3 Q. And so is Netflix an example of a consumption-only app?

4 A. Yes, it is.

5 Q. So you can go to the netflix.com website and actually
6 subscribe; correct?

7 A. Correct.

8 Q. Give them your credit card information, be a subscriber?

9 A. Yep. All of that happens on, yeah, the website, Netflix's
10 website.

11 Q. Right. And then you can go over to Google Play or the
12 Apple App Store and download the Netflix app for free; correct?

13 A. Correct.

14 Q. And then you can use that app to watch movies or TV shows
15 that are available through Netflix; correct?

16 A. Correct.

17 Q. And when that happens, Google Play doesn't get paid any
18 service fee; correct?

19 A. It does not get paid a service fee.

20 Q. And that's because the transaction is occurring on the
21 netflix.com website, not in the Play app; correct?

22 A. Correct.

23 Q. All right. Now, besides going consumption only, can a
24 developer also use another Android app store, like the Samsung
25 Galaxy Store?

1 A. It can.

2 Q. And can a developer offer the Android version of its app
3 only through Samsung Galaxy?

4 A. They could.

5 Q. And could they offer it, their app, through Samsung Galaxy
6 and the Play Store?

7 A. They could.

8 Q. And could they offer their app through the Samsung
9 Galaxy Store, the Play Store, and any other Android store
10 that's available?

11 A. They could.

12 Q. Let's talk a little bit about Epic.

13 So counsel discussed two different business considerations
14 that were going on inside of Google in 2018. Do you recall
15 that?

16 A. I do.

17 Q. So Google learned that Epic was considering launching
18 the -- Fortnite outside of Play, not giving it to Play;
19 correct?

20 A. Correct.

21 Q. And one of the things that Google considered was entering
22 into some partnership with Epic; correct?

23 A. Correct.

24 Q. And another thing that Google considered was whether it
25 should make an investment in Epic; correct?

1 A. Correct.

2 Q. Okay. So I want to talk about those two things
3 separately.

4 Were you supportive of the partnership between Google and
5 Epic?

6 A. Yeah, I was supportive.

7 Q. Why?

8 A. Well, because at that moment in time Fortnite was not only
9 a great gaming experience, which was becoming a bit of a social
10 experience because it was one of the first times that you had
11 massively multiplayer games available on any surface, console,
12 PC, and it was exciting. And you had events like a Travis
13 Scott concert appearing. You had -- you had gaming experiences
14 where hundreds of people could play simultaneously. It was a
15 very -- it was a rapidly growing experience. It seemed very
16 exciting, and it was definitely an experience that I wanted to
17 see on Google's services.

18 Q. And as you were evaluating the possibility of a
19 partnership between Google and Epic, were you considering a
20 deal that would involve multiple business areas within Google?

21 A. I was.

22 Q. Can you give examples of the kinds of business
23 arrangements that you were hoping to see in a partnership
24 between Google and Epic?

25 A. Sure. And it connects back to the ABK discussions we were

1 having earlier, but, I mean, Stadia, first of all, was at that
2 point something that we were -- this is, again, our version of
3 a gaming -- a streaming gaming where all you would need is a
4 controller and a television set and you could play any game.

5 Not having Fortnite on that would have -- would have very
6 much hurt that platform. Having Fortnite on that would have
7 been incredible value for that platform. So I wanted to see if
8 we could structure a deal with Stadia, the other areas like
9 advertising, Cloud, YouTube, people were watching Fortnite
10 content constantly on YouTube; and if there was a way to build
11 a partnership there, that would have been exciting. All of
12 these were areas that I wanted to look into.

13 **Q.** And were you hoping that Epic would find those kinds of
14 business opportunities to be something that they saw as
15 beneficial to Epic?

16 **A.** I was hoping that.

17 **Q.** Now, as you were thinking through this proposal to Epic,
18 did you think that what you were doing was trying to bribe
19 Epic?

20 **A.** No.

21 **Q.** Why did you not think of it as a bribe?

22 **A.** Because we would structure a commercial agreement with
23 gives and gets. There would be -- there's tremendous value
24 that Fortnite could bring to Google's ecosystems and Google's
25 products, and there was value I felt we could bring to, you

1 know, Epic's ecosystem and Epic's products; and there was a
2 chance to structure a deal where there would be gives and gets
3 on both sides, and at the end of the day we would have
4 something we both thought was beneficial.

5 **Q.** Now let's talk about the investment proposal where there
6 was consideration of making an equity investment in Epic.

7 Did Google ever even make that proposal to Epic?

8 **A.** No.

9 **Q.** Why -- did you support that kind of an investment in Epic?

10 **A.** I didn't but not because I didn't think -- I thought Epic
11 was an incredible company and Fortnite was an incredible game.
12 I was worried about valuation, and I was worried that we
13 wouldn't actually accomplish the strategic objectives we wanted
14 to through a small investment.

15 **Q.** And why did you think you wouldn't accomplish the
16 strategic objectives that people were talking about?

17 **A.** Because our team was trying to hope that a small -- or a
18 percentage investment that was less than control could convince
19 Epic to work with us across all the services I just talked
20 about.

21 My general view, and this is as a professional, is that a
22 minority investment, meaning an investment less than
23 50 percent, doesn't actually give you any ability to convince a
24 company to do anything on its own.

25 **Q.** All right. Let's move forward now. That was 2018. Let's

1 go forward to 2020.

2 Did you have conversations with Mr. Sweeney in 2020?

3 **A.** I did.

4 **Q.** And did you also exchange e-mails with Mr. Sweeney in
5 2020?

6 **A.** I did.

7 **Q.** All right. Could you look at Exhibit 5734 in your binder?

8 **A.** (Witness examines document.)

9 **Q.** And do you see that Exhibit 5734 is an e-mail exchange
10 between you and Mr. Sweeney in it looks like March of 2020?

11 **A.** Yes.

12 **MR. POMERANTZ:** All right. Your Honor, I would offer
13 Exhibit 5734 into evidence.

14 **MR. EVEN:** No objection, Your Honor.

15 **THE COURT:** It's admitted.

16 (Trial Exhibit 5734 received in evidence.)

17 **BY MR. POMERANTZ:**

18 **Q.** All right. So if you could take a look now at page 2.
19 Let's start at the first e-mail in time on March 3rd, which is
20 at the bottom of page 2.

21 And you see at the very first line Mr. Sweeney writes (as
22 read):

23 "Hi, Don. A few follow-ups."

24 Do you see that?

25 **A.** I do.

1 Q. Now, prior to this e-mail, so sometime shortly prior to
2 March 3rd of 2020, did you have a phone call with Mr. Sweeney?

3 A. Yeah. I believe that Tim and I had a phone call at the
4 end of February.

5 Q. All right. And do you recall what topics you and
6 Mr. Sweeney discussed during that phone call?

7 A. Yeah. There were two main topics. One was thoughts he
8 had around his Unreal Graphics Engine, and then we talked
9 about, you know, Google's business model -- Play's business
10 model.

11 Q. All right. So let's start with the first topic you
12 mentioned, Unreal Engine.

13 First of all, if you could explain to the jury in simple
14 terms, what is Unreal Engine?

15 A. Sure, and I'll stick to simple terms.

16 The graphics -- it's a graphics engine that would power a
17 gaming experience. So you could use this graphics engine to
18 build a game that would have competitive physics. Like
19 Fortnite where you're running around and shooting guns, this
20 graphics engine would allow you to do that in a way that was
21 easy for mobile developers. Any developer actually. Sorry.
22 PC and mobile developers.

23 Q. And what do you recall discussing with Mr. Sweeney during
24 this conversation about Unreal Engine?

25 A. Yeah, so we were having a difficult discussion about Play

1 and bringing Fortnite to Play. Because it was difficult, Tim
2 was offering the opportunity for us to work more deeply in
3 another area, which is -- which is the Unreal Engine. He was
4 proposing that we could think about a way to license that
5 either, you know, cheaply or freely in a way that would -- we
6 could offer that out to mobile developers, and mobile
7 developers could build applications very easily, and that would
8 be, you know, a win for Google and a win for Epic.

9 **Q.** All right. And now let's go to your discussion about
10 Play's business model.

11 Did Mr. Sweeney tell you what he didn't like about Play's
12 business model?

13 **A.** Yeah. He was critical of the business model. He
14 didn't -- he didn't agree with it. I defended the business
15 model. I thought that we had made a decision around the Play
16 business model that not only, you know, by attaching revenue
17 share to digital purchases and in-app purchases that it -- you
18 know, first, it was a decision that other people that are in
19 the gaming space and in the app space, like Apple, had used
20 similar business models, and so we were doing something that
21 had been done before.

22 And that, secondly, that we -- you know, that it had
23 certain advantages; and one of the advantages that I was
24 focused on was the fact if you're a small developer, you are
25 paying very little because you haven't earned very much

1 revenue, yet you can access Google's full -- you know, Play's
2 full distribution and Play's full services.

3 And Tim disagreed. He felt we had drawn the line in the
4 wrong place; that that model required, you know, large
5 companies to subsidize smaller companies, and that isn't the
6 right way to have developed the model.

7 **THE COURT:** Okay. Let's take our morning break. Come
8 back a few minutes before 11:00.

9 **THE CLERK:** All rise.

10 **THE COURT:** Mr. Harrison, you remain under oath. So
11 no communications about your testimony.

12 **THE WITNESS:** Okay.

13 (Recess taken at 10:43 a.m)

14 (Proceedings resumed at 11:00 a.m)

15 (Proceedings were heard out of the presence of the jury:)

16 **THE COURT:** Bring them in.

17 (Proceedings were heard in the presence of the jury:)

18 **MR. POMERANTZ:** May I proceed, Your Honor?

19 **THE COURT:** Yes, please.

20 **MR. POMERANTZ:** Thank you.

21 **Q.** Mr. Harrison, when we broke, you were in the middle of
22 describing a conversation that you had with Mr. Sweeney in late
23 February of 2020. Do you recall that?

24 **A.** Correct.

25 **Q.** And in your testimony just before the break, you said that

1 you and Mr. Sweeney were discussing Google's current business
2 model. Do you recall that?

3 A. I do.

4 Q. And by "Google" I meant Google Play.

5 A. Play, yeah.

6 Q. Do you understand that?

7 A. Yep.

8 Q. And I think you understand that that business model was
9 similar to the business model that the Apple App Store and
10 others use; correct?

11 A. Correct.

12 Q. So I just want to make sure that's clear.

13 When you say "the business model," do you essentially mean
14 that Play gets paid when the developer gets paid?

15 A. I do, yeah.

16 Q. And that the way Play gets paid is by a percentage of the
17 revenue that the developer receives?

18 A. Yes. The revenue share arrangements, yes.

19 Q. All right. And that's basically the way that the Apple
20 App Store works as well?

21 A. It is.

22 Q. And is it your understanding that that's also the way that
23 Sony has created the PlayStation Game Store?

24 A. Yes.

25 Q. And they use -- that the PlayStation Store gets paid only

1 when the developer gets paid -- the game developer gets paid?

2 A. That's true.

3 Q. And Microsoft runs the Microsoft Xbox store the same way?

4 A. Agreed, yes.

5 Q. And Nintendo runs the Nintendo Switch store the same way;
6 correct?

7 A. Yes.

8 Q. Now, you said right before we broke that Mr. Sweeney told
9 you that he thought that that model led to big game developers
10 like Epic subsidizing small game developers. What did you
11 understand Mr. Sweeney to mean by that?

12 A. There are costs to running any sort of -- any store at
13 this size, especially one which is delivering games out to --
14 or games or mobile applications out to billions of users from,
15 you know, hundreds, if not millions, of developers. And the
16 costs that are done through revenue share mean that if you are,
17 you know, selling a lot through your application or as a result
18 of subscriptions or acquisitions of your app, your gaming app,
19 for instance, then you would earn a lot of revenue and the
20 revenue you would share with Play or with Apple would be
21 significant.

22 If you're a small developer with very little revenue, then
23 the amount of revenue you're earning is minimal; and,
24 therefore, the amount that you're paying to Play would be
25 minimal as well.

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1 Q. And did Mr. Sweeney express the view that he did not think
2 that that was the right business model for Play?

3 A. Yeah. He thought we had drawn the line in the wrong way.

4 Q. And did Mr. Sweeney say what he thought was an alternative
5 business model that Play should consider?

6 A. Yeah. He proposed alternatives. The general idea would
7 be that an application store offers a series of services;
8 right? It offers distribution, meaning a method for the apps
9 to get out to millions, if not billions, of users. It offers
10 security, meaning it does scans and confirmations that the
11 application is safe; and, therefore, people are more, you know,
12 interested in downloading it and using that application.

13 And there are a variety of other services as well, and we
14 could pay for -- or a developer could choose to pay for each
15 service separately.

16 Q. And so did you understand Mr. Sweeney to be saying that if
17 a developer wanted distribution, they would pay a fee for
18 distribution?

19 A. That's -- that's how I understood his proposal.

20 Q. And basically every app developer is looking for Play to
21 provide distribution; correct?

22 A. That business model would require every developer, no
23 matter what size they were, to pay a fee to access distribution
24 through Google Play.

25 Q. And Play also offers security services to all app

1 developers; correct?

2 **A.** It does. We do scans of applications to confirm that they
3 don't contain malware.

4 **Q.** Okay. So let's talk about free apps that never charge a
5 subscription to the consumer and never offer anything for sale
6 inside the app. Okay? Just those free apps. Okay?

7 **A.** Okay.

8 **Q.** How many of those kinds of apps are available in the
9 Play Store?

10 **A.** Millions.

11 **Q.** And are many of those free apps offered by small
12 developers?

13 **A.** They are.

14 **Q.** And do these free apps offered by small developers use
15 distribution services?

16 **A.** They do.

17 **Q.** And do they use security services?

18 **A.** They do.

19 **Q.** And do these small developers currently pay anything to
20 Play for the distribution and security services that they
21 receive?

22 **A.** No, they do not.

23 **Q.** Do they pay anything to Play for any of the services that
24 they receive?

25 **A.** Not unless they earn revenue, no.

1 Q. All right. And under Mr. Sweeney's alternative proposal,
2 would these small developers now have to start paying fees to
3 Google Play?

4 A. They would.

5 Q. All right. Let's go to this same e-mail now, this March
6 e-mail, and let's look at the last paragraph at the very end of
7 the e-mail on page 3. And this says "Fortnite release on
8 Google Play."

9 I take it you and Mr. Sweeney were talking about ways in
10 which you could try to convince Mr. Sweeney to make Fortnite
11 available on Play; correct?

12 A. Correct.

13 Q. All right. And in this e-mail, could you just read the
14 text to the jury, please?

15 A. Sure. At the end? Sorry. After "Fortnite release on
16 Google Play"?

17 Q. Go a little slower so that the jury can follow along.

18 A. Sure. (as read):

19 "Will Google give Epic a time frame in which it will
20 consider accepting Fortnite on Google Play while we solely
21 use Epic's own payment processing systems? Note that
22 we've stated Epic's willingness to pay market rates for
23 appropriate CDN costs associated with software delivery
24 and any other actual costs and reasonable markups
25 associated with operating just the Google Play Store."

1 Q. All right. So I want to focus on the -- just the second
2 sentence, the one that begins "Note," with the word "Note."
3 And you see it refers to something called CDN costs?

4 A. I do see that.

5 Q. What are CDN costs?

6 A. As I understand it, CDN are -- it's a content delivery
7 network is the cost associated with delivering content. Play
8 is a version of a content delivery network because it is a way
9 to get applications from servers distributed out to mobile
10 phones, installed on mobile phones so that mobile phones can
11 use those applications.

12 Q. And so when Mr. Sweeney used the phrase "CDN costs," did
13 you understand he was referring to the costs associated with
14 things like servers or bandwidth or things like that?

15 A. The costs associated with distributing applications on
16 mobile phones, which are -- include servers and the technology
17 required to deliver the applications.

18 Q. Okay. Now, this e-mail was sent just a few days after the
19 conversation you had with Mr. Sweeney; correct?

20 A. Correct.

21 Q. In that conversation he had proposed to have developers
22 pay just for the services that they used; correct?

23 A. Correct.

24 Q. Did you view this sentence here, this proposal here, as
25 consistent with the proposal that Mr. Sweeney had made just a

1 few days earlier?

2 **A.** I did. He is acknowledging that the CDN itself provides
3 value and is willing to pay for the value of having his
4 applications distributed.

5 **Q.** All right. Now, the jury is going to see this exhibit
6 when they go back into the jury room, so I do want to explain
7 one thing that's on the first page perhaps without using
8 profanity.

9 So if you could look at the first page. We won't use all
10 the words, but if you can look at the first page of this
11 exhibit, and you see that there is a screenshot from a YouTube
12 video. Do you see that there?

13 **A.** I do.

14 **Q.** Do you see that it uses the "F" word in connection with
15 Epic? Do you see that?

16 **A.** I see that.

17 **Q.** Did Google have anything to do with the posting of this
18 video on YouTube?

19 **A.** No. This is a video created by a creator and uploaded to
20 YouTube.

21 **Q.** And did Google do anything to manipulate its YouTube
22 algorithm so that Mr. Sweeney or any Epic fan would see this
23 video?

24 **A.** No. YouTube's algorithms recommend content based on what
25 you've watched before, and so this video would reflect the

1 interest of the watcher. We would never interfere with that.

2 **Q.** Let's go to the bottom video -- I'm sorry -- the bottom
3 e-mail on this page. Do you see the one that begins "On
4 March 25th"?

5 **A.** I do.

6 **Q.** And this is you writing to Mr. -- writing back to
7 Mr. Sweeney on March 25th; correct?

8 **A.** Correct.

9 **Q.** All right.

10 **MR. POMERANTZ:** Could we go to the next page,
11 Mr. Nicols, and the top -- the carryover paragraph?

12 **BY MR. POMERANTZ:**

13 **Q.** And you see at the end of that first paragraph you say (as
14 read):

15 "We would be happy to welcome you to Google Play if
16 you are willing to comply with our existing policies,
17 which include the use of Google Play's billing system."

18 Could you explain to the jury what you meant by that
19 sentence?

20 **A.** Well, obviously we want -- we would love Fortnite to be
21 available through Google Play, and we want to figure out a way
22 to welcome them to Google Play, but they need to comply with
23 our existing policies, which includes our Google Play -- using
24 our Google Play Billing system.

25 **Q.** All right. Now, sometime relatively shortly after you

1 sent this e-mail, did you learn that Mr. Sweeney had decided to
2 accept your proposal and to make Fortnite available on Play and
3 to comply with Google's policies?

4 **A.** Yes, I was surprised, but I received an e-mail from him
5 saying that he intended to do that.

6 **Q.** All right. Let's look at Exhibit 5735.

7 **A.** (Witness examines document.)

8 **Q.** All right. Do you recognize this e-mail as an e-mail
9 exchange between you and Mr. Sweeney?

10 **A.** I do.

11 **MR. POMERANTZ:** Your Honor, I would offer Exhibit 5735
12 into evidence.

13 **MR. EVEN:** No objection.

14 **THE COURT:** It's admitted.

15 (Trial Exhibit 5735 received in evidence.)

16 **BY MR. POMERANTZ:**

17 **Q.** All right. If we could go now -- let's, again, start from
18 the bottom up so we can take it chronologically. If we can go
19 to the second page.

20 Do you see at the bottom you send a telephone invite? Do
21 you see that?

22 **A.** I do.

23 **Q.** So had you heard from your team that they had heard from
24 Epic that they were going to submit Fortnite for the Play Store
25 in compliance with Google's policies?

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1 **A.** I had heard that, yes.

2 **Q.** And did you then try to set up a call with Mr. Sweeney?

3 **A.** I did.

4 **Q.** And then Mr. Sweeney says right above it (as read):

5 "Can we please cover any topics you wanted to discuss
6 in e-mail?"

7 Do you see that?

8 **A.** I do.

9 **Q.** And so then you did respond by e-mail. If we go back up
10 to the next e-mail up, the one that says April 10th from you.
11 Do you see that?

12 **A.** I do.

13 **Q.** And you say in the first sentence (as read):

14 "Hi, Tim. My team just informed me that Epic is
15 planning to publish a compliant version of Fortnite on
16 Play."

17 Do you see that?

18 **A.** I do.

19 **Q.** What did you mean by "a compliant version of Fortnite"?

20 **A.** So it would be a version that would comply with all of our
21 Play policies.

22 **Q.** And that would include using Google Play Billing?

23 **A.** Yes.

24 **Q.** And not an Epic billing system; correct?

25 **A.** Yes.

1 Q. All right. And then if you look at the last sentence of
2 that same paragraph, you say (as read):

3 "Also, as we've discussed, my charter is across
4 Google and so if there are other services (YouTube, Cloud)
5 I could connect you with, let me know."

6 Do you see that?

7 A. I do.

8 Q. And so that's part of your effort to be a good partner?

9 A. I'd like to build a broader partnership with Epic, yes.

10 Q. All right. And then Mr. Sweeney responds up at the top.

11 Do you see that?

12 A. I do.

13 Q. And his first few paragraphs he's expressing his
14 disagreement with Google's practices and policies; correct?

15 A. Correct.

16 Q. And then in the last paragraph, the one that begins "In
17 the meantime," do you see that?

18 A. I do.

19 Q. And he says (as read):

20 "In the meantime, you had said that Google would be
21 happy to have Fortnite on Android under its existing
22 terms, so here we are."

23 Do you see that?

24 A. I do.

25 Q. So what did you understand him to mean when he said that

1 he was going to be providing Fortnite to Play under its
2 existing terms?

3 **A.** I understood that he disagreed with those policies, but
4 that he was willing to provide Fortnite in a way that complied
5 with Google's Play policies.

6 **Q.** All right. And then after this e-mail, did Fortnite
7 launch on the Play Store?

8 **A.** It did.

9 **Q.** So now let me bring you forward to August 13th of 2020.

10 Do you recall that on that date Epic activated something
11 called a Hotfix inside of the Fortnite version of the game that
12 it had provided to Play?

13 **A.** I do.

14 **Q.** Do you recall what happened to the Fortnite version that
15 was available on Play when the Hotfix activated the code?

16 **A.** Yeah. It turned on Epic's billing -- billing platform.

17 **Q.** And did you have any idea that that was going to happen?

18 **A.** No.

19 **Q.** What was your reaction when Epic activated the Hotfix?

20 **A.** Yeah, I was -- I was surprised because it seemed that we
21 had agreement to move forward. The teams had invested a lot in
22 moving forward, and this was disappointing and a waste of time.

23 **MR. POMERANTZ:** No further questions, Your Honor.

24 **THE COURT:** Okay. Any brief recross?

25 **MR. EVEN:** Yes, Your Honor.

HARRISON - REDIRECT / EVEN

REDIRECT EXAMINATION

BY MR. EVEN:

Q. Mr. Harrison, I'm going to jump around a little bit, so try and bear with me, please.

A. Okay.

Q. Let's start with a question you were asked by the Court, if ABK is a competitor of Google.

If ABK had opened an Android app store together with another large developer as it said it was contemplating, it would become a competitor to Google Play; correct?

A. Correct.

Q. Now, if you go to Exhibit 8019, which is the ABK document. Do you have it?

A. I do.

Q. And your counsel asked you about what Google gets; correct?

A. Correct.

Q. And what Google was getting, based on the first line, is something called sim-ship; correct?

A. Correct.

Q. And "sim-ship" means that ABK would launch its games on Google Play before or at the same time as on any other store; correct?

A. Correct.

Q. And if you then go back to the risks that we had discussed

HARRISON - REDIRECT / EVEN

1 before, what this says is that the risk of not having a
2 sim-ship deal is that ABK would launch a store with another
3 major mobile company and immediately become a competitor to
4 Play; correct?

5 **A.** Yeah, correct.

6 **Q.** And then the flip side of that, what you're telling your
7 superiors at Google, is that if Google pays \$360 million and
8 there is a sim-ship deal, that risk will be eliminated and
9 averted. They will not launch, they will not become a
10 competitor; correct?

11 **A.** No, not correct. They're free to launch.

12 **Q.** Sir, this is the risk of losing the deal. That means that
13 if you make the deal, they will not launch and the risk will
14 not happen. They will not become a competitor; correct?

15 **A.** That's not correct. They're free to launch.

16 **Q.** That's not how you understand what you wrote?

17 **A.** That's not how I understand what I wrote.

18 **Q.** Okay. I think we'll let the jury deal with that.

19 **A.** They would have to ship it on both platforms at the same
20 time. That's what "sim-ship" means.

21 **Q.** Sir, there's no question pending yet.

22 You were also talking about the major risk of this deal,
23 which is if Google doesn't enter the deal, ABK may start
24 diverting more money to IOS than to Google Play; correct?
25 That's what you said to your counsel, except that risk is not

HARRISON - REDIRECT / EVEN

1 here; right?

2 **A.** Sorry. You're asking me if there's a risk that they will
3 advertise more on Apple than us?

4 **Q.** I'm asking whether there's a risk that they take their
5 games only to IOS or invest more in their games on IOS. That
6 risk is nowhere on this list of risks; correct?

7 **A.** That is a risk, yes.

8 **Q.** That is not a risk that you've identified in this
9 document; correct?

10 **A.** Correct. Well, no. It says "pull away from ads." It
11 says literally in the final bullet "pull away from ads."

12 **Q.** "Pull away from ads."

13 **A.** Ads.

14 **Q.** Correct.

15 **A.** Right.

16 **Q.** But there's nothing here that says "We think they'll
17 invest more in their game, they'll make a better game for Apple
18 than the game for Play"?

19 **A.** I thought one of the things you said was they would invest
20 more in advertising on IOS.

21 **Q.** No, that's not what I said. I did not say --

22 **A.** I thought that's what you just said.

23 **THE COURT:** Let's just stop. Listen carefully to the
24 question. All right?

25 Start again please, Mr. Even.

HARRISON - REDIRECT / EVEN

1 **MR. EVEN:** Thank you, Your Honor.

2 **BY MR. EVEN:**

3 **Q.** My question was simple. There is no risk here that says
4 that ABK will take its games only to IOS or make better games
5 on IOS than on Google Play; correct?

6 **A.** That is not written here, yes.

7 **Q.** All right. Let's talk for a second about Spotify, and
8 that is 1496. If we can go back to it.

9 You said that the proposal here was not intended to
10 reflect Android value; correct?

11 **A.** Correct.

12 **Q.** Let's go to page 5 again just to see what was actually
13 written at the time.

14 And do you see that you said at the time, or your team
15 said at the time (as read):

16 "Google will charge a service fee of 6 percent on all
17 transactions to reflect the value realized of opening the
18 platform distribution, publishing, updating, loyalty, and
19 investing in the user experience for Spotify users"?

20 Did I read that correctly?

21 **A.** You did.

22 **Q.** Let's go to the second -- the following point on that
23 slide.

24 Do you see it says (as read):

25 "We believe" --

HARRISON - REDIRECT / EVEN

1 Sorry. Below that (as read):

2 "We believe it's important, also under advice of
3 counsel, to charge a service fee to reflect the values of
4 the platform outlined in the framing."

5 Correct?

6 **A.** That's what it says, yes.

7 **Q.** And that's a reference to the 6 percent; correct?

8 **A.** That's a reference to the compromised proposal for
9 Spotify, yes.

10 **Q.** Sir, the word "compromise" is nowhere here; right? It
11 says (as read):

12 "We believe Spotify will negotiate on this; and if we
13 go below 6 percent (e.g. to 1 percent), which is in line
14 with their proposal, we should consider increasing the
15 cost of processing."

16 That's what it says; right?

17 **A.** That's what this says, yeah.

18 **Q.** And Spotify did negotiate on this; right?

19 **A.** They did negotiate.

20 **Q.** And they got it down to zero; correct?

21 **A.** We negotiated and they -- at 0 percent and 4 percent
22 depending on how they structure their -- how they use their
23 Play billing systems.

24 **Q.** Okay. They have 0 percent if they process their own
25 transaction and 4 percent if Google processes their

HARRISON - REDIRECT / EVEN

1 transactions; right?

2 **A.** Yeah. There are other commitments under that deal.

3 **Q.** Correct. And there is no payment at all of a standing fee
4 that applies to all transactions; correct?

5 **A.** Other than the success fee that we negotiated, right.

6 **Q.** The success fee is even more money flowing to Spotify?

7 **A.** No, it's not. That's not what the success fee is. The
8 success fee is both of us contributing \$50 million to advertise
9 the benefits of Spotify on Android.

10 **Q.** We were talking a little bit about YouTube. That's about
11 document 6190.

12 YouTube -- first of all, you're not testifying under oath,
13 I hope, that YouTube is no longer selling anything for money on
14 the Apple App Store; correct? They've not gone completely
15 consumption only; right?

16 **A.** No, I don't think so, yeah.

17 **Q.** They're still selling stuff? They're still charged
18 15 percent or 30 percent; correct?

19 **A.** There are services that they do use the extra for.

20 **Q.** Now, consumption only is not a model that's even open to
21 games developers; correct?

22 **A.** No, I don't believe it is.

23 **Q.** I'm sorry?

24 **A.** Sorry. I don't believe -- I can imagine a gaming
25 developer -- like Netflix right now is developing a gaming

1 experience --

2 Q. Sir --

3 A. -- and they intend to -- I'm trying to answer your
4 question. They intend to go consumption only on their gaming
5 experience.

6 Q. Sir, on their regular gaming apps, that's not an option
7 that's available, correct, right now? Google will not allow
8 it?

9 A. Correct.

10 Q. Thank you.

11 Now, you said this is YouTube's view, not Google's view.

12 Just so we're clear, most of Google's apps are free;
13 correct? They monetize through advertising.

14 A. Yes. We have a subscription service on storage. We have
15 YouTube, like NFL Sunday Ticket. There are examples where we
16 charge. A lot of them are available for free as well.

17 Q. Okay. And so YouTube, which is about the only division at
18 Google that actually sells something on the IOS store, thinks
19 that 15 percent to 30 percent is steep and the others who pay
20 nothing, they think it's fine?

21 A. YouTube is in the content industry, and parts of the
22 content industry are very expensive.

23 **THE COURT:** Just, I really want you to listen to the
24 question and answer it as it's posed. Okay? The answer can be
25 "yes," "no," "I don't know," but those are the answer ranges.

HARRISON - REDIRECT / EVEN

1 **THE WITNESS:** Okay.

2 **THE COURT:** Ask that again, please, Mr. Even.

3 **BY MR. EVEN:**

4 **Q.** I was asking, YouTube, which is about the only developer
5 within Google that actually sells something for money on the
6 app store, believes that 15 to 30 percent is steep; whereas,
7 the other apps that Google gives away for free and they don't
8 pay anything, they're fine with that policy?

9 **A.** That's correct.

10 **Q.** I want to talk a little bit about the back and forth about
11 what Mr. Sweeney was or wasn't proposing to you.

12 Now, the jury will hear from Mr. Sweeney soon, so I'm not
13 going to try and steal his thunder, but I want to make clear
14 what it is that you think you thought you heard Mr. Sweeney
15 say.

16 What Mr. Sweeney told you is that Google should open up
17 the platform and allow people to choose their own payment
18 solution and their own distribution platform freely; correct?

19 **A.** Yeah, that's correct.

20 **Q.** Okay. And then what he said after that is if Google
21 really feels it necessary to charge some people some CDN costs,
22 he can see how that can happen. But his basic point was you
23 are charging too much because you lock down the platform to
24 everyone; correct?

25 **A.** No. He -- I mean, he believed that our service did have

HARRISON - REDIRECT / EVEN

1 value. There were parts of it that did have value and that
2 developers could choose to pay for that value. The other parts
3 he felt should be opened up, yes.

4 Q. And, in fact, he wrote that to you; correct?

5 A. The reference to CDN in that e-mail?

6 Q. No. He wrote that CDN, but he wrote to you prior to that
7 to say "I think you should open the platform for everyone";
8 right?

9 A. Yeah, he did say that.

10 Q. For instance, if you go to 5885, that's in a new binder
11 that you were handed.

12 A. I'm sorry, a new binder -- the new binder only has 86
13 ones.

14 Q. Okay. Let's go to 5734 that you were talking to
15 Mr. Pomerantz about.

16 A. Okay.

17 Q. And in that e-mail that you were referencing that
18 Mr. Sweeney wrote to you about maybe potentially agreeing to
19 pay for CDN costs, you see that Mr. Sweeney had multiple other
20 complaints; correct.

21 A. Correct.

22 Q. He was complaining about Google's Advanced Protection
23 Program; correct?

24 A. It's a question but, yes.

25 Q. He was complaining about Google -- how Google keeps

HARRISON - REDIRECT / EVEN

1 leaking stuff to the press?

2 A. Correct.

3 Q. He was complaining about the Google/Activision leak;
4 correct?

5 A. That's not a leak from us, but he's asking me questions
6 about the leak.

7 Q. Okay. And you wrote to him two e-mails up at 11:51 that
8 you -- that (as read):

9 "Regarding the allegations" -- that's at the top of
10 page 2 -- "Regarding the allegations you made below and we
11 discussed other the phone, I've looked into these things
12 and don't believe they are supported."

13 That's what you told him; right?

14 A. I did.

15 Q. In fact, those allegations were supported; right?

16 A. I'm not aware of that.

17 Q. You're not aware of that?

18 A. I'm not. I asked --

19 Q. Let's take it from the back. Start with the
20 Google/Activision leak.

21 You see that Mr. Sweeney is saying (as read):

22 "I can find no official announcement. Just stories
23 resulting from leaks. Around the time of this deal,
24 certain partnership discussions around distribution went
25 quiet without explanation."

HARRISON - REDIRECT / EVEN

1 Do you see that?

2 **A.** I do.

3 **Q.** Do you understand that is a reference to the discussions
4 that Epic had at the time with Activision that disappeared once
5 the Hug deal was signed; right?

6 **A.** But we have nothing to do with that.

7 **Q.** Well, you had a deal that you recommended to your Business
8 Council that said, "They are telling us they are going to open
9 up a distribution platform with another major company"; right?

10 **A.** Our deal would have allowed them to do that.

11 **Q.** It's not rocket science. You understand that Mr. Sweeney
12 is asking you "Did ABK stop talking to me because you paid them
13 off?"

14 **A.** My partnership discussions with them are confidential, and
15 we never --

16 **Q.** Sir, confidential is a different thing from
17 unsubstantiated.

18 **A.** But we never paid them. He was free to do the deal that
19 he's talking about here.

20 **Q.** Sir, that was the risk you've identified to your Business
21 Council and that's, in fact, what happened, and Mr. Sweeney is
22 asking you about that, and you said that this is unsupported?

23 **A.** I have no idea what is going on between Epic and
24 Activision. I have no idea what they're talking about, and I
25 have no control over it either.

HARRISON - REDIRECT / EVEN

1 Q. What you understand is he's talking to you about
2 discussions around distribution?

3 A. I understand what the e-mail says. I have no idea what
4 Epic and Activision are discussing.

5 Q. You just never connected the dots between the fact that
6 Activision told you "We are going to go to the market and
7 become a competitor with a major other company" and
8 Mr. Sweeney's question saying "You paid them off, there's a
9 leak about that, and now they're not talking to me anymore"?
10 You never connected those dots?

11 A. If I would have connected the dots, I would have asked for
12 language that would have stopped them from doing this, and I
13 never asked them for that language.

14 Q. Let's go up.

15 "Google Leaks of Epic Discussions." Do you see that?

16 A. I do.

17 Q. And Mr. Sweeney is asking you (as read):

18 "Do you plan to share your findings on Google leaking
19 the contents of our private discussion to Abner Li
20 resulting in the article at 9to5Google?"

21 Do you see that?

22 A. I do.

23 Q. And then there's another shady press dealing, such as
24 using security analysis as a weapon against Epic. He's talking
25 about a leak about the vulnerability; correct?

HARRISON - REDIRECT / EVEN

1 **A.** Correct.

2 **Q.** And the leak about the vulnerability happened; correct?
3 Google leaked that?

4 **A.** I don't believe we leaked it, but I --

5 **Q.** You don't believe you leaked it?

6 **A.** -- asked our teams to look into this, and I was never told
7 that we leaked it.

8 **Q.** Did the teams that you're talking about include Hiroshi
9 Lockheimer?

10 **A.** I would have talked to our legal teams about this.

11 **Q.** Does that include Tristan Ostrowski?

12 **A.** It would have included Tristan, yes.

13 **Q.** And he told you that that is not supported? That it never
14 happened?

15 **A.** Yes.

16 **Q.** Okay. What about the leak to Abner Li? Have you looked
17 into that?

18 **A.** I have.

19 **Q.** You have? With who?

20 **A.** With our legal department. I asked them to look into
21 the -- I passed on what Tim had told me and asked them to look
22 into it.

23 **Q.** Are you sure of that, sir?

24 **A.** I am sure of that.

25 **Q.** Let's take a look for a second at 8612.

HARRISON - REDIRECT / EVEN

1 Do you recognize that as the Abner Li story?

2 **A.** I'm not familiar with the story but, yes, I recognize it
3 as an Abner Li story.

4 **MR. EVEN:** Your Honor, I move to admit 8612 at this
5 point.

6 **MR. POMERANTZ:** Your Honor, it's hearsay and it's
7 not --

8 **MR. EVEN:** It's not being offered for the truth.

9 **THE COURT:** What are you going to do with it?

10 **MR. EVEN:** I'm going --

11 **THE COURT:** I'm not going to admit it. You can ask
12 him some questions. He can certainly look at it if he needs
13 to.

14 **BY MR. EVEN:**

15 **Q.** Do you see the story is talking about Epic seeking a
16 special billing exception?

17 **A.** Do you want me to read the whole story? What -- I'm
18 sorry. I'm just not familiar.

19 **Q.** In the heading do you see that it says "Epic is seeking a
20 special billing exception"?

21 **A.** I see that heading, yeah.

22 **Q.** And that was not what Mr. Sweeney was asking at the time;
23 right? Mr. Sweeney was asking for Google to open up payments
24 for all developers; correct?

25 **A.** He was, yes, that's correct.

HARRISON - REDIRECT / EVEN

1 **Q.** Right. So let's go now to 8613, and those are e-mails
2 between you and others dated December 7 to 12, 2019. Do you
3 see that?

4 **A.** This is the e-mail that begins with Dan Jackson from --

5 **Q.** Correct.

6 **A.** Yep.

7 **Q.** Mr. Dan Jackson is a communications person at Google;
8 correct?

9 **A.** That's correct.

10 **MR. EVEN:** And, Your Honor, I would like to move 8613
11 into evidence at this point.

12 **MR. POMERANTZ:** No objection, Your Honor.

13 **THE COURT:** It's admitted.

14 (Trial Exhibit 8613 received in evidence.)

15 **MR. EVEN:** Thank you.

16 **BY MR. EVEN:**

17 **Q.** And if you go back to -- all the way to the back to
18 page 7, you see there's an e-mail from Mr. Samat?

19 **A.** I do.

20 **Q.** And Mr. Samat writes to Hiroshi, Kent, and Don. Do you
21 see that?

22 **A.** I do.

23 **Q.** And Don is you; right?

24 **A.** Don is me.

25 **Q.** And he writes (as read):

HARRISON - REDIRECT / EVEN

1 "We want to give you a heads-up that we received a
2 carefully worded letter from Epic that says they intend to
3 publish a version of Fortnite to the Google Play Store
4 this coming week that bypasses Google Play Billing."

5 Do you see that?

6 **A.** I do.

7 **Q.** If you go down (as read):

8 "We wanted to make you aware that the second bullet
9 point is we have a reactive statement ready."

10 Do you see that?

11 **A.** I do.

12 **Q.** Okay. Flip a couple of pages forward ending in page 006.

13 Do you see there's another e-mail from Mr. Samat at 12:09?

14 **A.** (Witness examines document.) Sorry. 006, yep.

15 **Q.** Do you have it? It's on the screen.

16 **A.** I do, yeah.

17 **Q.** You see it says (as read):

18 "... plus Donald Harrison, who we've been working
19 with closely on all of this."

20 Do you see that?

21 **A.** I do.

22 **Q.** And if you go to the second paragraph, do you see that
23 Mr. Samat at some point writes (as read):

24 "I am biased to get our fully message out there and
25 not to let Epic tell the entire story?"

HARRISON - REDIRECT / EVEN

1 Do you see that?

2 A. (Witness examines document.) I do see that.

3 Q. And if you go to the next e-mail up, that's from somebody
4 called Corey duBrowa; right?

5 A. He's our head of communications at the time, yeah.

6 Q. This is your head of communications at the time, and he
7 says (as read):

8 "Colin will update on next steps coms-wise, but a few
9 pieces have landed that are helpful and have caused a bit
10 of a swirl at Epic."

11 Do you see that?

12 A. I do.

13 Q. And do you see that the first one is a 9to5Google story
14 called Fortnite/Android/Google Play Store? Do you see that?

15 A. I do.

16 Q. You understand that's the Abner Li piece that we just
17 looked at; right?

18 A. Yes.

19 Q. And then the last line (as read):

20 "Just in case we're wondering who did this," it says
21 "think we caught them offguard and they are revisiting
22 their plans."

23 Do you see that?

24 A. I do.

25 Q. And if you go to the next page up, you see Colin Smith is

HARRISON - REDIRECT / EVEN

1 then, indeed, updating? Do you see that?

2 **A.** I do.

3 **Q.** And all the way at the bottom, the last thing he says is
4 (as read):

5 "At this point, the general narrative in coverage and
6 comments is that this is a greedy move by Epic."

7 Do you see that?

8 **A.** I do.

9 **Q.** And this is a -- the public and general narrative because
10 the piece has said that Epic is looking for a special deal,
11 which it never did; correct?

12 **A.** We talked about a way to work together on Unreal Engine,
13 but I --

14 **Q.** Sir, this is a story about Epic saying "I want to launch
15 with my own payment solution," and it was presented as Epic
16 looking for a special deal instead of Epic telling Google "You
17 should open that opportunity up for all developers"; right?

18 **A.** Right.

19 **Q.** And if you go to the next e-mail up -- sorry -- the next
20 page, 004, and that's another Colin Smith at 11:36 a.m. Do you
21 see that?

22 **A.** I do.

23 **Q.** And at the bottom of the first paragraph under "Coverage,"
24 Mr. Smith -- who's a communications person; right?

25 **A.** He is.

HARRISON - RECROSS / POMERANTZ

1 **Q.** And he reports (as read):

2 "Already beginning to feel like an old news cycle
3 which was the primary goal of our strategy."

4 Did I read that correctly?

5 **A.** You did.

6 **Q.** And if you go to the first page of the document, on the cc
7 line, the fourth name is Donald Harrison; correct?

8 **A.** Correct.

9 **Q.** That is you?

10 **A.** Correct. Yes, it is me.

11 **MR. EVEN:** No further questions, Your Honor.

12 **MR. POMERANTZ:** Your Honor, could I have one minute,
13 please?

14 **THE COURT:** Very briefly, yes.

15 **RECROSS-EXAMINATION**

16 **BY MR. POMERANTZ:**

17 **Q.** Mr. Harrison, I want to take you back to this
18 December 2019 time period and the circumstances around the
19 contents of what Mr. Even was just discussing with you.

20 Epic came to Google and wanted to have a version of
21 Fortnite that had only Epic billing on it; right?

22 **A.** Correct.

23 **Q.** And when the user selected Epic billing, Google Play got
24 paid nothing under that approach; correct?

25 **A.** Correct.

SWEENEY - DIRECT / BORNSTEIN

1 **Q.** No matter what services Epic was receiving, distribution
2 to billions of people, security, and everything else, Epic's
3 proposal at that time was to pay Google nothing; correct?

4 **A.** Correct.

5 **MR. POMERANTZ:** No further questions.

6 **THE COURT:** Okay. You may step down.

7 (Witness excused.)

8 **THE COURT:** Who's next?

9 **MR. BORNSTEIN:** Your Honor, Epic calls Tim Sweeney.

10 **THE COURT:** Okay. We'll stop a little bit after
11 12:00 for lunch, but let's get started.

12 **THE CLERK:** Please raise your right hand.

13 **TIMOTHY DEAN SWEENEY,**

14 called as a witness for the Plaintiff, having been duly sworn,
15 testified as follows:

16 **THE WITNESS:** I do.

17 **THE CLERK:** Thank you. Please be seated.

18 Please state your full name for the Court and spell your
19 last name.

20 **THE WITNESS:** Timothy Dean Sweeney,
21 Sweeney-W-E-E-N-E-Y.

22 **THE CLERK:** Thank you.

23 **MR. BORNSTEIN:** Thank you, Your Honor.

24 \\\

25 \\\

SWEENEY - DIRECT / BORNSTEIN

DIRECT EXAMINATION

BY MR. BORNSTEIN:

Q. Mr. Sweeney, good morning.

A. Good morning.

Q. Can you tell everybody where you work, please?

A. I work for Epic Games.

Q. And what do you do at Epic Games?

A. I'm the CEO of Epic Games and the chairman of the board.

Q. And as the CEO, just generally speaking, what are your responsibilities?

A. I'm ultimately responsible for everything the company does. My primary role is to manage Epic's executive team and to oversee our strategy.

Q. Who founded Epic Games?

A. I started Epic.

Q. When?

A. In 1991.

Q. And when you started the company, how many people were involved?

A. It was just me then.

Q. And how old were you at the time?

A. I was 20.

Q. So immediately before you started the company, what were you doing?

A. Well, I was studying mechanical engineering at the

1 University of Maryland, and I was programming in my spare time,
2 which I'd been doing since I was 12.

3 **Q.** And what were the origins of Epic Games as a company?

4 **A.** Well, I'd been making video games for a long time. I just
5 played them myself and kept them to myself. And early 1991, I
6 had a game that I thought had a lot of potential, but I wasn't
7 sure. So I invited a bunch of friends over and neighborhood
8 kids, and my mom made cookies and everybody played my video
9 game and everybody really loved it, and that gave me the
10 confidence to release the game and start the company in 1991.

11 **Q.** All right. So let's fast-forward to today.

12 What are the products and services that Epic offers just
13 at a high level?

14 **A.** Well, we do three categories of things. First of all, we
15 make video games, like Fortnite, Rocket League, and Fall Guys.
16 We also make technology that's used by other video game makers
17 and other industries called the Unreal Engine.

18 And, finally, we make the Epic Game Store, which sells PC
19 games and Mac games to consumers that in partnership with
20 third-party developers add Epic games and also sells our own
21 games.

22 **Q.** We heard a lot about the store from Mr. Allison on the
23 first day of trial and we've heard a lot about Fortnite.

24 I want to ask you about the Unreal Engine. We heard a
25 little bit about that a few minutes ago, but just what is the

1 Unreal Engine?

2 **A.** The Unreal Engine is a piece of technology that powers
3 video games and other 3-D graphic applications.

4 It provides 3-D graphics capability, a physic simulation,
5 and multiplayer technology to provide the guts that are used by
6 a wide variety of different games.

7 **Q.** And are there other uses for the Unreal Engine besides
8 games?

9 **A.** Yes. Nowadays the engine is powerful enough and realistic
10 enough that it's used in film and television production. *The*
11 *Mandalorian* project on Disney Plus was powered by Unreal, for
12 example.

13 It's also used in architecture so architects can visualize
14 their spaces and show clients a virtual version of it before
15 anything is actually built.

16 And it's used in other industries, like automotive, to
17 preview cars and configure cars before a car is built for a
18 customer.

19 **Q.** So what was your personal role, Mr. Sweeney, in the
20 initial creation of the Unreal Engine?

21 **A.** I built the very first version of the Unreal Engine myself
22 between 1995 and 1998. I was programming NC Plus Plus, and I
23 wrote about a quarter million lines of computer code in this
24 three and a half years.

25 **Q.** Are there competitors that the Unreal Engine faces?

1 **A.** Yes.

2 **Q.** Who are they?

3 **A.** There's a variety. Unity Engine is the leading engine for
4 making mobile games in the industry used by over a million
5 developers.

6 There's an open source engine called Godot, which is used
7 by a lot of independent developers now.

8 And another source of competition is all of the major
9 companies in the industry, such as Activision and
10 Electronic Arts, have built their own internal technology over
11 the years but by their own teams. And so when they're
12 considering Unreal Engine, they're also often considering using
13 their own technology instead.

14 **Q.** And so in the face of competition, how does Epic persuade
15 customers to use the Unreal Engine rather than the other
16 options that they have?

17 **A.** We compete in a variety of ways. First of all, we're
18 really constantly striving to provide the best technology with
19 the coolest graphic features and the easiest development tools
20 for developers to use.

21 We also compete on price and with business models offering
22 customers a variety of different options, anything from paying
23 a royalty for the use of the Unreal Engine and no money upfront
24 to paying Epic, you know, upfront for a royalty fee deal.

25 And we also compete in customer service in providing

1 support to partners to help them build games that are
2 successful.

3 **Q.** When was the Unreal Engine first released to the public?

4 **A.** Well, it was first released to a customer in 1996.

5 **Q.** And since then, how -- generally speaking, how has it
6 evolved?

7 **A.** Well, it's come a very long way since I wrote the first
8 version of it. Now there's a team of over 300 engineers
9 contributing a wide variety of specialized features to move the
10 engine forward.

11 The tools have grown way more advanced. Whereas, the very
12 first version of the Unreal Engine had graphics that were 3-D
13 but, you know, very, very pixelized and low detail, the current
14 version can produce scenes that in a lot of cases are very
15 close to being indistinguishable from reality.

16 **Q.** Now, I understand the team has put together a short
17 one-minute video or so that demonstrates the capabilities of
18 the Unreal Engine.

19 Before we show it, can you just explain to the jury what
20 it is that they're about to see?

21 **A.** Sure. We're about to see not a video game but the tools
22 video game authors use to create a game. So we're going to see
23 people sitting at their fancy computers working with the
24 Unreal Engine, and then we're going to see what's on their
25 screen as they go about building a game or 3-D environment.

SWEENEY - DIRECT / BORNSTEIN

1 **MR. BORNSTEIN:** Great. Can we cue that up,

2 Ms. McGuire?

3 (Video was played but not reported.)

4 **BY MR. BORNSTEIN:**

5 **Q.** Now, Mr. Sweeney, are you still personally involved in the
6 creation of this technology?

7 **A.** Yeah. I still find some time to write code that's
8 incorporated in our products.

9 **Q.** And how does the Unreal Engine fit in with the overall
10 mission of Epic as a company?

11 **A.** Well, Epic serves two roles in the industry. We make
12 video games that are played by gamers and we also serve
13 developers of all sorts of 3-D content. And the Unreal Engine
14 is really synergistic -- in a synergistic relationship with our
15 game teams. Our game teams want more features. They ask the
16 engine team. The engine team builds more technology, and that
17 helps our game teams advance our games forward.

18 **Q.** Let's talk about your games.

19 Is this the first time -- this case, I mean this dispute
20 with Google -- the first time that Epic has had a serious
21 disagreement with one of its platform partners?

22 **A.** No. We've had another major disagreement in the past.

23 **Q.** All right. I want to dig into that a little bit.

24 So when did Epic first release Fortnite to the public?

25 **A.** In the middle of 2017.

1 Q. And at that point in time in 2017, what were the different
2 places where a user could play Fortnite?

3 A. Fortnite worked on computers, such as Windows, PCs, and
4 Macs. It worked on two consoles at the time, the Microsoft
5 Xbox and the Sony PlayStation.

6 Q. And so if I were playing on an Xbox at the time and you
7 were playing on a PlayStation, could we play with each other
8 together in a game?

9 A. You couldn't.

10 Q. Why not?

11 A. Well, this was not a limitation of the technology that we
12 made. The Unreal Engine has always supported players playing
13 together across platforms. The problem is that Sony had a
14 policy, and Microsoft too to a certain extent, that said that
15 players on their console couldn't play with players on the
16 other consoles.

17 Q. Was this policy just for Fortnite?

18 A. No. It applied to all game developers.

19 Q. And what was your view of this policy?

20 A. This was really terrible, especially for Fortnite. You
21 know, Fortnite was becoming a phenomena throughout 2017 and
22 2018 throughout college dorms and high schools. People were
23 playing Fortnite together in really wide social groups, you
24 know, with tens of millions of players around the world, and
25 the fact that Xbox players and PlayStation players weren't

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1 allowed to play together was actually breaking up social
2 groups. You'd have kids who couldn't play with their friends
3 because this rule prevented that.

4 **Q.** So did you communicate these views to the people at Sony
5 and Microsoft?

6 **MR. KRAVIS:** Objection. Relevance.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** Yes.

9 **BY MR. BORNSTEIN:**

10 **Q.** And did these folks engage with you in discussions around
11 the topic?

12 **A.** Yes. So I had lengthy discussions with both Microsoft and
13 Sony.

14 **Q.** Can you take a look at the binder in front of you, please,
15 Exhibit 8004.

16 **A.** Yes.

17 **Q.** And is this an e-mail -- I'm going to turn you to the very
18 first e-mail in the chain, which is on the last page.

19 Is this an e-mail from you to somebody named Phil Spencer
20 in January of 2018?

21 **A.** Yes.

22 **MR. BORNSTEIN:** Your Honor, I move the admission of
23 Exhibit 8004.

24 **MR. KRAVIS:** No objection.

25 **THE COURT:** It's admitted.

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(Trial Exhibit 8004 received in evidence.)

BY MR. BORNSTEIN:

Q. So just to start with -- if we can go to the last page -- who is Mr. Spencer, the person you're corresponding with here?

A. Phil Spencer is the head of Xbox and gaming at Microsoft.

Q. And I want to direct you to the middle of the e-mail.

There is a sentence in that third paragraph that says (as read):

"We want to work with Microsoft to unblock all console-mandated interop restrictions."

Can you translate that into English, please?

A. Sure. Interop is programmer speak for interoperability, meaning the ability for Xbox players to play together with PlayStation players.

Q. And so what were you asking Mr. Spencer to do here?

A. To let Xbox players play with all other players on all other platforms.

Q. And was this the only type of communication like this that you had with Microsoft?

A. No. There are at least a dozen e-mails on this topic.

Q. Did you ever make any progress with Microsoft in getting them to change this policy against cross-play?

A. We did.

Q. Can you explain what happened?

A. Yeah. By the middle of 2018, Microsoft had agreed to

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1 allow cross-platform play between Xbox and all other -- all
2 other platforms, including mobile platforms and the Sony
3 PlayStation.

4 **Q.** Let's talk about Sony.

5 Did you have similar communications with the people at
6 Sony?

7 **A.** Yes.

8 **Q.** And did you make any progress with the people at Sony?

9 **A.** No. We ran into a roadblock. After months and months of
10 back-and-forth discussion, Sony came back to us with the
11 decision that they would not allow PlayStation players to play
12 with Xbox players within that PlayStation 4 generation.

13 **Q.** And so what did Epic do about that?

14 **A.** We prepared to go to battle with Sony to either convince
15 or force them to change their policy.

16 **Q.** Let me ask you to take a look at Exhibit 8005 in your
17 binder.

18 And on the second page there's an e-mail from you to a
19 different person named Phil, Phil Rosenberg, in June of 2018.
20 Do you see that?

21 **A.** Yes.

22 **MR. BORNSTEIN:** All right. Your Honor, I'd move the
23 admission of Exhibit 8005 at this time.

24 **MR. KRAVIS:** No objection.

25 **THE COURT:** It's admitted.

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(Trial Exhibit 8005 received in evidence.)

BY MR. BORNSTEIN:

Q. So, Mr. Sweeney, just generally speaking, what is this document, this e-mail that you sent to -- well, I should ask first, who's Mr. Rosenberg, the recipient here?

A. Phil Rosenberg is the head of all developer relations at Sony. He's responsible for dealing with companies like Epic.

Q. Okay. And so what is this e-mail that you sent to Mr. Rosenberg here?

A. We'd reached an impasse in our discussions with Sony to make cross-platform play work on PlayStation, and we decided to go to battle with Sony and so I outlined Epic's concerns with Sony's policy, how it was unfair for players and how we believed it was unlawful, and stated our plan for confronting Sony on the issue in hopes that Mr. Rosenberg would either reconsider or at least understand what Epic was about to do.

Q. All right. Well, let me direct you to part of the e-mail. On the second-to-last paragraph near the bottom you say (as read):

"Please inform Koderas-san" --

First of all, who is Koderas-san?

A. Koderas-san was the worldwide CEO of Sony.

Q. Okay. So you say (as read):

"Please inform Koderas-san and please be clear that Epic will enable full interoperability between all

1 platforms in Fortnite at a timely point in the future."

2 What did you mean by that?

3 **A.** I meant because Epic controlled the Fortnite software, we
4 could give players the ability to play between PlayStation and
5 other platforms without Sony's say-so by updating Fortnite to
6 do that, and I was telling Sony that we intended to do that at
7 some point in the near future.

8 **Q.** If Epic had gone ahead and done that, would that have been
9 consistent with Sony's policies at the time?

10 **A.** No. This would have been in clear violation of Sony's
11 policies.

12 **Q.** Let me ask you to look a little further down in the e-mail
13 same paragraph. You say (as read):

14 "We are prepared to pursue this course with all
15 available resources wherever it leads us and for however
16 long."

17 What did you mean by that?

18 **A.** This was an existential issue for our company. We felt it
19 was something our future absolutely depended on, and that we
20 were willing to fight Sony through a legal battle in court if
21 necessary. We were willing to fight them with our technology
22 and our software and our control of the software by releasing
23 the support that we wanted. And we were willing to go to
24 battle against Sony in public relations and talking to gamers
25 and talking to other game developers about our concerns with

1 Sony's policies.

2 **Q.** Why was Epic prepared to do all of that?

3 **A.** Because Sony's policy was unfair to gamers, it was unfair
4 to game developers, and it was ruining gaming at the time.

5 Because Fortnite was going to become this mass phenomenon, the
6 number one game in the world, the inability of players to play
7 together was a critical limit not only to Epic's ability to
8 build our business and satisfy our customers, but on all game
9 developers to do the same thing.

10 **Q.** So how did --

11 **THE COURT:** Let's break for lunch, and we'll come back
12 at 12:30.

13 **THE CLERK:** All rise.

14 (Proceedings were heard out of the presence of the jury:)

15 **THE COURT:** You remain under oath, so don't discuss
16 your testimony.

17 **THE CLERK:** Court is in recess.

18 (Luncheon recess was taken at 11:58 a.m.)

19 **AFTERNOON SESSION**

12:35 p.m.

20 (Proceedings were heard out of the presence of the jury:)

21 **MR. POMERANTZ:** Your Honor, at the beginning or end of
22 the next break, if we can talk about that document we raised.

23 **THE COURT:** Yeah. Let's do it at the next one.

24 **MR. POMERANTZ:** Thank you.

25 (Proceedings were heard in the presence of the jury:)

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1 **THE COURT:** Okay. Go ahead.

2 **MR. BORNSTEIN:** Thank you, Your Honor.

3 **BY MR. BORNSTEIN:**

4 **Q.** So before lunch, Mr. Sweeney, we were talking about the
5 confrontation you had with Sony over a cross-platform play. Do
6 you recall that discussion?

7 **A.** Yes.

8 **Q.** All right. And after you sent the letter -- the e-mail
9 that we saw in Exhibit 8005, how did Sony respond to Epic's
10 position?

11 **A.** Sony took our complaint very seriously, and Mr. Rosenberg
12 brought the issue to his executives, and Sony's Japanese board
13 of directors deliberated and Sony agreed to open up the
14 PlayStation to cross-platform play.

15 **Q.** In your view, what effect has opening up cross-platform
16 play had on Fortnite players?

17 **A.** It's been wonderful opening up, enabling everybody on all
18 platforms on Fortnite to play together, and it's reconnected
19 these friendships that were previously broken by the
20 cross-platform restrictions.

21 **Q.** And when cross-platform play was opened up by Sony and
22 Microsoft, was that limited to Fortnite players?

23 **A.** No. Sony opened up cross-platform play to all developers.

24 **Q.** Since that time when you had this dispute with Sony, how
25 has Epic's relationship with Sony evolved?

1 **A.** We both found that confrontation really cathartic. We
2 developed much closer relations with Sony. Now Sony Music is
3 partnering with Fortnite to bring music into the game.
4 Sony Pictures is using Unreal Engine for virtual production;
5 and Sony Corporation made a major investment into Epic Games
6 and is now a shareholder in our company.

7 **Q.** Let's move to smartphones.

8 When did Fortnite first launch on smartphone platforms?

9 **A.** Fortnite first came to smartphones starting with IOS in
10 March of 2018, and then later in the year came to Android.

11 **Q.** All right. Let me focus on Android here.

12 Did Epic consider launching Fortnite on the Google Play
13 Store in 2018?

14 **A.** Yes, we considered it and that was our initial plan.

15 **Q.** Did Epic follow through on the plan to launch on the
16 Play Store?

17 **A.** No. We later considered the opportunity to launch
18 Fortnite outside of the Play Store and decided to do that
19 instead.

20 **Q.** Would you please explain why Epic chose to launch Fortnite
21 outside of the Play Store in 2018?

22 **A.** One of our main goals as a company is to build a direct
23 relationship with our customers to ensure that they can come
24 and do business directly with us. We can transact with them
25 financially directly. And we had had a huge amount of success

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1 launching Fortnite direct to customers on PC and Mac prior in
2 2017, and we thought that we could replicate the success that
3 we'd had there on Android.

4 **Q.** Okay. You mentioned the way that Fortnite was launched on
5 PC and Mac. Would you just explain how a PC or Mac user could
6 get Fortnite onto their computer?

7 **A.** Sure. We distributed Fortnite to PC and Mac owners
8 directly to them from our website. So rather than going to a
9 software store, you would just go to fortnite.com and depending
10 on your device, there would be a download button on the top
11 right-hand corner of the website, you'd click it, and it would
12 begin installing Fortnite on your device. And then you could
13 play it and keep the game updated so you could continue to play
14 it.

15 **Q.** And was the idea to do the same thing on Android?

16 **A.** Exactly.

17 **Q.** Was there any financial component to the decision to
18 launch Fortnite outside of the Google Play Store?

19 **A.** Yes. We were very motivated by building a direct
20 relationship with our customers because Google took a
21 30 percent cut of all transactions processed through games
22 distributed on the Play Store. It's a huge portion of a game's
23 revenue. Sometimes the majority of it's profit for us,
24 sometimes more than the majority of it's profit; and we very
25 much wanted to avoid that and do business directly with our

1 customers without a store taking 30 percent.

2 **Q.** So when you decided to launch Fortnite outside of the
3 Google Play Store, did you let Google know?

4 **A.** No. For the five months in which we were developing
5 Fortnite to launch outside of the Google Play Store, I had
6 given Epic employees instructions to tell Google nothing until
7 it shipped.

8 **Q.** Why did you give that instruction?

9 **A.** I was afraid that Google would work to undermine our plans
10 to launch Fortnite on our own.

11 **Q.** What specifically were you concerned that Google might do?

12 **A.** Google was a very powerful company. We were concerned
13 that they could launch a PR campaign to undermine our efforts.

14 We were afraid that they might take technical steps to
15 make it difficult or impossible to install Fortnite from our
16 website onto Android devices.

17 And we had realized that one of the ways we could reach
18 Fortnite users was by doing deals with smartphone
19 manufacturers, OEMs, and with carriers like AT&T and T Mobile.
20 We realized they had a very close relationship with Google, and
21 Google could use their contacts with those companies to
22 undermine our ability to do Fortnite preload deals and
23 preinstall Fortnite on users' devices.

24 **Q.** Did you ever let Google know about your plans to launch
25 Fortnite outside of the Play Store?

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1 **A.** Yes. I ultimately told Google's senior executives about
2 our plan about four weeks before we launched.

3 **Q.** How did you let them know?

4 **A.** I scheduled a phone call to meet with them; and in advance
5 of the phone call, I sent them an e-mail explaining our plans
6 to launch Fortnite outside of Google Play.

7 **Q.** Can you turn, please, in your binder there to
8 Exhibit 5504?

9 **A.** (Witness examines document.)

10 **Q.** And I'm going to ask you to look at the last e-mail on the
11 page. It's the first e-mail in time on June 22, 2018. Do you
12 see that?

13 **A.** Yes.

14 **Q.** Is this the e-mail that you were just talking about that
15 you sent to the senior Google executives?

16 **A.** Yes.

17 **MR. BORNSTEIN:** Your Honor, I move the admission of
18 Exhibit 5504.

19 **MR. KRAVIS:** No objection.

20 **THE COURT:** It's admitted.

21 (Trial Exhibit 5504 received in evidence.)

22 **MR. BORNSTEIN:** If we could look at the e-mail from
23 Mr. Sweeney, which continues onto the second page there.

24 **BY MR. BORNSTEIN:**

25 **Q.** There's a sentence in bold which says (as read):

1 "Fortnite will be distributed via APK download from
2 fortnite.com rather than Google Play Store."

3 Can we do some terminology? What is "APK download"?

4 **A.** Sorry. I'm using programmer speak here. An APK file is a
5 computer file that contains an Android application; and so by
6 downloading an APK file from our website, you're beginning the
7 process to download the Fortnite application onto your device
8 and install it onto your device.

9 **Q.** And so in nonprogrammer speak, what is it that you were
10 saying to the senior executives at Google here?

11 **A.** I was telling them that rather than putting Fortnite on
12 the Google Play Store, we were putting it on our website so
13 that users could install it directly from us.

14 **Q.** Okay. And just below that there's a section with the
15 underlined heading "Background on the Distribution Plan," and
16 the first thing you say is "Epic believes in open platforms."

17 More terminology. What are open platforms?

18 **A.** Open platforms are devices or operating systems in which
19 users are free to install software from any source that they
20 choose and in which developers like Epic are free to distribute
21 software directly to users without users and developers having
22 to go through a middleman or a store.

23 **Q.** And why does Epic believe in open platforms?

24 **A.** I founded the company on games for open platforms. Back
25 in 1991 when I made my first games, users could mail a check to

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1 Epic and I would mail out a floppy disc containing our game.
2 They'd get it directly from Epic, the user would install it on
3 their machine, and no other company would be involved in the
4 transaction.

5 **Q.** So at this point in time in 2018, did you think that
6 Android was an open platform?

7 **A.** Yes, I absolutely believed it was.

8 **Q.** Why is that?

9 **A.** Well, android has been built on top of an open-source
10 operating system, meaning any individual or company could use
11 it; and Android had been heavily marketed by Google and others
12 as an open platform, and it technically allowed users to
13 install software to the device. And so at that point I
14 believed it was an open platform comparable to Windows or Mac.

15 **Q.** We'll come back to that in a little bit. I want to ask
16 you about -- a little bit more on your e-mail here.

17 About two dashed bullets down you say (as read):

18 "Smartphone app stores don't add value commensurate
19 with a 30 percent distribution fee."

20 What did you mean by that?

21 **A.** Epic, by this time we had become intimately familiar with
22 the economics of distributing our software directly to users.
23 We had been distributing Fortnite to users. We made hundreds
24 of millions of dollars distributing Fortnite directly to users,
25 and so we understood the costs of payment processing, of

1 operating a download service, of processing -- sorry -- of
2 providing customer support to our customers and providing
3 bandwidth in order to download the software onto another
4 device.

5 And so, you know, in all of our analysis, those costs add
6 up to 5 to 7 percent of revenue, and Google's 30 percent was
7 far, far, far beyond that.

8 **Q.** A little further down you say (as read):

9 "Epic isn't seeking to negotiate better Google Play
10 terms. This is driven by the principle and opportunity of
11 open platforms."

12 Why did you write that here?

13 **A.** Epic's strategy was to build a business, bring our games
14 directly to customers everywhere we could. We'd been
15 successful with that on PC and Mac, and we wanted to do the
16 same thing on Android, both to avoid the stores and their
17 complications and their fees, but also to be able to eventually
18 launch a store ourselves as we did on PC.

19 And we very much wanted to go ahead and launch Fortnite
20 outside of Google Play rather than getting Google to do some
21 sort of special deal to pay us extra to put Fortnite on
22 Google Play.

23 **Q.** How did Google respond after you sent this e-mail
24 informing them of Epic's plans?

25 **A.** They wanted to have further discussions, and that resulted

1 in a subsequent phone call, which was relatively brief, and
2 that phone call led to a meeting shortly after at Google's
3 Mountain View headquarters.

4 **Q.** What happened at that meeting?

5 **A.** At Google headquarters, Google executives presented a
6 proposal to -- for Epic to put Fortnite onto Google Play; and
7 rather than changing the Google Play terms to accommodate our
8 view that the fee was far too high, they instead offered a
9 series of side deals to compensate Epic in other ways.

10 They offered Epic a Fortnite Esports streaming deal with
11 YouTube, they offered Google Cloud services for free or at a
12 discounted rate, and they offered various forms of ad
13 partnerships to provide Google ads for free or a discount, and
14 other services provided by the Google family of companies.

15 **Q.** What was your perception of that proposal?

16 **A.** It seemed like a crooked arrangement to me because, you
17 know, our complaint at the core was that Google charged far too
18 much for Google Play distribution; and Google was proposing a
19 series of side deals which seemed designed to convince Epic to
20 not compete with them in stores, not compete with them in
21 distributing our software directly, and to make it look to the
22 outside world like we bought into their 30 percent terms when,
23 in fact, we were very much in disagreement with their
24 30 percent terms.

25 **Q.** So this may be obvious based on what you just said, but

1 did Epic accept the proposal?

2 **A.** No. By the end of the meeting, I'd given Google
3 executives a very clear answer that we didn't want to pursue
4 their deal.

5 **Q.** And you mentioned a couple times "Google executives." Who
6 specifically from Google was at this meeting that you remember?

7 **A.** There were several people. Jamie Rosenberg was the
8 primary presenter and participant, and then Hiroshi Lockheimer
9 joined the meeting for the second half.

10 **Q.** And after you gave your answer of no, how did the meeting
11 wrap up?

12 **A.** At the end of the meeting, Hiroshi Lockheimer came up and
13 he made some statements to me that led me to worry that Google
14 intended to obstruct our efforts to release Fortnite directly
15 to users.

16 **Q.** Well, did you follow through and launch Fortnite outside
17 of the Google Play Store?

18 **A.** Yes, we did.

19 **Q.** And so when users went to your website and pushed the
20 button, what is it that they actually got onto their phone?

21 **A.** Well, there were a bunch of steps in the process, but
22 installation involved two major steps. The first step was to
23 go to our website and download something we called the Fortnite
24 Launcher, which later became known as the Epic Games app and
25 then the Epic Game Store.

1 And then as the second step, the Epic Games app, or
2 Fortnite app, installed Fortnite and then kept Fortnite up to
3 date over time.

4 **Q.** Why did Epic have this two-step process for the download?

5 **A.** All apps like -- and games like Fortnite, which are
6 frequently updated, go through a similar process of either
7 installing a launcher to keep the game updated or being
8 distributed to a store which keeps the game updated.

9 In the case of Fortnite, we update the game every week or
10 every two weeks, and having a launcher ensures that the user
11 can always have the up-to-date version of Fortnite available on
12 their device and ready to go.

13 If we had distributed just the Fortnite app directly from
14 our website, then every week when we released a new Fortnite
15 version, users would have to go to our website, download it,
16 and start the entire process all over again.

17 **Q.** So aside from the Epic Games website, where else -- or was
18 there anywhere else that users could get access to Fortnite on
19 an Android device back when you launched in 2018?

20 **A.** Yes. We'd also managed to make a deal with Samsung to
21 distribute Fortnite through the Samsung Galaxy Store.

22 **Q.** Why did you make a deal with Samsung and put Fortnite on
23 its store when Epic refused to put Fortnite on the Google Play
24 Store?

25 **A.** Well, when we realized we wanted to launch outside of

1 Google Play, we realized Google was a rather difficult
2 adversary and had the ability to obstruct us; and so we set out
3 to build partnerships with hardware manufacturers and OE -- and
4 carriers in order preinstall Fortnite or carry it on additional
5 stores.

6 And of all of the companies we talked to, Samsung was our
7 closest partner and able to make progress the most quickly, and
8 so we were able to launch simultaneously on our website and the
9 Samsung Galaxy Store.

10 **Q.** What were the financial terms of the arrangement with
11 Samsung in terms of revenue share?

12 **A.** We'd negotiated with Samsung, and they had agreed to waive
13 their normal 30 percent fee in the case of Fortnite and instead
14 charge us 12 percent of revenue for transactions that they
15 processed.

16 **Q.** So back in 2018 when Fortnite was launched on Android, did
17 you think that Epic would be able to be successful outside of
18 the Google Play Store?

19 **A.** Yes.

20 **Q.** How did that turn out?

21 **A.** Well, it was a -- it was a depressing process. In the
22 first few weeks, we had a lot of success in downloads as the
23 most engaged Fortnite users, the people who are most excited
24 about Fortnite, went through all of the steps that were
25 necessary to get Fortnite onto their devices.

1 But after that first few weeks, the rate of users
2 installing Fortnite dropped dramatically to a rate that was far
3 below what we'd expected, and it remained low from then onward
4 to now.

5 **Q.** Well, at a high level, what were the different types of
6 problems that Epic faced in getting Fortnite distributed to
7 users outside of the Google Play Store?

8 **A.** Well, there were two types of problems. The first were
9 when users went to our website to directly download Fortnite,
10 the process was incredibly complicated. Initially it involved
11 17 steps, though we simplified it as new Android versions came
12 out over time.

13 Most users who weren't the most engaged hardcore Fortnite
14 players were really put off by Google's warning screens, which
15 says, you know, "This software is coming from an unknown source
16 and may harm your device" and asked the user to waive
17 responsibility for that.

18 And, second of all, our efforts to distribute through
19 other companies' store were much less successful than we
20 expected. The Samsung Galaxy Store reached far fewer users
21 than we had hoped; and our efforts to do bundling deals,
22 preinstallation deals with carriers and OEMs also ran aground
23 as we discovered that they had secret deals with Google which
24 prevented them from preinstalling the Fortnite launcher on
25 their devices.

1 Q. And what information did you have as to whether or not
2 users knew to look for something outside of the Google Play
3 Store in the first place?

4 A. We'd -- well, after the initial wave of Fortnite players
5 came in, we found that subsequent Fortnite players didn't think
6 to look anywhere but the Google Play Store. They went to the
7 Google Play Store, they searched for Fortnite, and Google had
8 built a custom message just for people searching for Fortnite
9 which said something along the lines of "Fortnite is not
10 available here," which I worry users took as an indicator that
11 Fortnite wasn't available on Android.

12 And, you know, most of these users who weren't hardcore
13 Fortnite players didn't think to do a Google Search for
14 Fortnite to find it on our website or go to the Samsung
15 Galaxy Store.

16 Q. I want to explore one other potential explanation for how
17 Fortnite performed on Android. Is it the case that all Android
18 phones are capable of running Fortnite?

19 A. No.

20 Q. Why not?

21 A. Well, as of the time we launched in 2018, there were, I
22 believe, at least 2 billion Android devices in the world and a
23 large number of these devices were in developing economies
24 where people were buying \$50 or \$100 smartphones which just
25 didn't have the hardware and memory necessary to run Fortnite

1 or didn't have the resources to run Fortnite well.

2 And so we identified about 400,000 -- sorry -- 400 million
3 out of the couple billion Android users, 400 million people had
4 Android devices we identified were capable of Playing Fortnite
5 well. And so that was our expectation, that we would reach
6 some number of those 400 million and not the 2 billion.

7 **Q.** And so how did Fortnite perform in that smaller universe
8 of 400 million that could actually run the game?

9 **A.** It performed below our expectations by a factor of
10 several, like by a factor of three or four.

11 **Q.** Now, when Epic launched Fortnite in 2018, were you aware
12 that Google had created something called the Fortnite Task
13 Force?

14 **A.** No, I did not know about it.

15 **Q.** All right. When Fortnite was launched in 2018, were there
16 any security issues that came to light with the Fortnite app?

17 **A.** Yes.

18 **Q.** Can you explain what came out?

19 **A.** Shortly after our launch day, Google forwarded some
20 messages from a Google security researcher who'd identified a
21 kind of security vulnerability in the Fortnite app version that
22 was distributed through the Samsung Galaxy Store.

23 **Q.** Was that vulnerability also present on the version of
24 Fortnite that people got if they went to epicgames.com?

25 **A.** No. This vulnerability was only in the Samsung

1 Galaxy Store version of Fortnite.

2 **Q.** Can you explain what the vulnerability actually was?

3 **A.** Sure. It's known as a Man-in-the-Disk vulnerability.

4 It's complicated, but the idea is that if a user installed

5 Fortnite through the Samsung Galaxy Store and then went

6 somewhere else to a rogue web page and installed malware from

7 that web page, then the malware could modify some of the files

8 that Fortnite had installed and use that to install or to

9 escalate its privileges to become more malwary.

10 **Q.** Are you aware of whether any users were actually adversely
11 affected by the vulnerability that you described?

12 **A.** No.

13 **Q.** What did Epic do when Google informed it of the
14 vulnerability?

15 **A.** We began working on it immediately. Epic engineer Chris
16 Babcock took responsibility for identifying the vulnerability.
17 First of all, he verified it; and in conversation with Google
18 and with Google's help was able to identify a fix to the
19 vulnerability, to test the fix, to cure the fix with Samsung,
20 and to release the fix to users in the course of about
21 two days.

22 **Q.** Did there come a time when Epic decided to submit a
23 version of Fortnite to the Google Play Store for launch?

24 **A.** Yes, we did.

25 **Q.** When did Epic first do that?

1 **A.** Towards the end of 2019.

2 **Q.** Why did Epic suddenly decide to submit Fortnite to the
3 Google Play Store after not doing so in 2018?

4 **A.** We realized that after an initial wave of successful
5 installs, that most users were severely deterred from
6 installing Fortnite through any mechanism other than the Google
7 Play Store and realized that Google Play was the only hope that
8 we had for actually reaching users given the obstruction in the
9 platform.

10 So we began the process of preparing a version of Fortnite
11 for Google Play, and talked to Google executives about our
12 plans.

13 **Q.** And what exactly did Epic submit for launch on the Google
14 Play Store in 2019?

15 **A.** In 2019 we submitted to Google a version of Fortnite which
16 used our own payment service rather than Google Play's payment
17 service.

18 **Q.** Did you tell Google that's what you were doing?

19 **A.** Yes. In advance of submitting this version to Google, I
20 sent Google senior executives an e-mail outlining our plans.

21 **Q.** Can I ask you to look in your binder there at
22 Exhibit 5509?

23 And this looks to be an e-mail from you to Hiroshi
24 Lockheimer, Jamie Rosenberg, and others dated December 5, 2019;
25 correct?

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1 **A.** Yes.

2 **Q.** Is this the e-mail that you were just describing?

3 **A.** Yes.

4 **MR. BORNSTEIN:** Your Honor, I move the admission of
5 Exhibit 5509.

6 **MR. KRAVIS:** No objection.

7 **THE COURT:** It's admitted.

8 (Trial Exhibit 5509 received in evidence.)

9 **BY MR. BORNSTEIN:**

10 **Q.** So I'll direct you to a few things in here, Mr. Sweeney.
11 First, in the second paragraph of the e-mail you say (as
12 read):

13 "We hope that Google will accept Fortnite and untie
14 the Google Play distribution platform from Google Play
15 in-app billing."

16 Can you explain what you meant by that, please?

17 **A.** Yes. For games, Google's terms said that developers
18 distributing their games on Google Play were required to use
19 Google's in-app billing for purchases made in those games. You
20 had no choice. Developers could not use anything else.

21 And we wanted Google to untie the Google Play Billing
22 requirement from the store so that developers could choose to
23 either use Google's service or use their own.

24 **Q.** And why did Epic want Google to make that change?

25 **A.** Well, we felt Google's billing system was inferior to

1 ours. We wanted to do a better job of handling customer
2 payments and customer support resulting from those payments,
3 and we didn't want to pay Google's 30 percent fee for payment
4 processing, which was far in excess of the fees that we paid
5 for payment processing through PayPal and Visa and MasterCard.

6 **Q.** Let me direct you to the second page of the e-mail, the
7 top paragraph there. You say (as read):

8 "The future of smartphones is in open platforms where
9 developers can choose freely among storefronts, in-app
10 payment services, cloud services, and engines. This
11 future is going to come about one way or another."

12 What did you mean by that?

13 **A.** I meant that I believed that Google's position was
14 untenable both legally and in terms of developer relations, and
15 that either Google could proactively change its terms itself
16 and give developers a better deal by unbundling
17 Google Play's -- or untying Google Play's billing from the
18 distribution service or that Google would be ultimately forced
19 through litigation or regulation.

20 **Q.** Did you at this time think it was a realistic possibility
21 that Google would actually accept Fortnite with Epic's payment
22 system?

23 **A.** Yes.

24 **Q.** Why?

25 **A.** Google's policies were really quite ambiguous. Their

1 written policies said one set of things that were quite clear,
2 but then their executives said another set of things about
3 payment rules. And then when you looked at what apps -- major
4 apps on the Google Play Store were actually doing, it seemed
5 that their payment rules were actually something different
6 still.

7 And so because there are so many apps on the Google Play
8 which prominently use their own payment services for digital
9 goods that were usable in-app, we thought that Google might not
10 enforce or might not actually intend this policy to be binding
11 on all developers, and so we wanted to find out firsthand for
12 sure whether Google would allow our payment service in Fortnite
13 or not.

14 **Q.** What were the kinds of apps you were talking about that
15 used their own payment service on Google Play?

16 **A.** Here in 2019 the Spotify app was using its own billing
17 service for songs and subscriptions -- or sorry -- just
18 subscriptions available through the Spotify app. The Bandcamp
19 app was using its own billing system. The Match dating apps,
20 various of them, were using their own billing systems, and
21 numerous other apps -- an internal team within Epic had
22 compiled a list -- were using their own billing system in a way
23 that didn't seem to line up with Google's written policies at
24 all.

25 **Q.** So how did Google respond to your request in 2019?

1 **A.** We end up -- ended up submitting two versions of Fortnite,
2 one after the other. The first version was rejected for two
3 reasons. One, accidental; and the second reason -- the second
4 submission was rejected for -- solely for using a Google -- a
5 non-Google Play billing service.

6 **Q.** How widely known within Epic was this request that's
7 reflected in Exhibit 5509?

8 **A.** It was just a handful of people who were working on the
9 engineering side and marketing side of our plans.

10 **Q.** Did you tell anybody outside of Epic or outside of Google
11 that Epic was making this request?

12 **A.** No.

13 **Q.** Did anybody outside of Epic or outside of Google learn
14 around this time that Epic had made the request?

15 **A.** Yes. A few days after I sent this e-mail to Google's
16 senior executives and general counsel, a story came out on
17 9to5google.com written by Abner Li which outlined Epic's plans
18 in some detail and criticized them in a number of -- number of
19 ways.

20 **Q.** So what did you do when you found out about this article?

21 **A.** I contacted Don Harrison at Google expressing
22 disappointment that Google had leaked our plans to the press,
23 and asked him to look into what happened and why Google had
24 done that.

25 **Q.** And what did Mr. Harrison respond to you -- or how did

1 Mr. Harrison respond to you?

2 **A.** I had to push him several times to get an answer, and
3 ultimately he replied with an e-mail in which he gave a
4 nonanswer that neither admitted nor even denied that Google had
5 leaked our plans to the press.

6 **Q.** And did you subsequently speak to Mr. Harrison in the
7 first half of 2020 about Google Play and Fortnite?

8 **A.** Yes.

9 **Q.** Did you have a conversation about the Google Play business
10 model?

11 **A.** Yes. Yes, we had a conversation somewhere in that time
12 frame and why I expressed discontent with Google's approach.

13 **Q.** And what did you tell Mr. Harrison in that conversation
14 about your discontent?

15 **A.** It was a very long conversation where I made many points,
16 but the key one here is I nor Epic had any dispute with Google
17 offering users a billing service and offering users free
18 distribution in exchange for using their billing service, but
19 we felt that Google should unbundle their billing service from
20 their distribution vehicle, Google Play Store, for developers
21 who wanted to use them a la carte so that developers could pick
22 and choose among the best offerings in the industry; for
23 example, choosing the Google Play Store alongside their own
24 billing service and other components from other companies.

25 And I indicated that Epic would prefer to use these

1 services unbundled, and that we would be happy to pay
2 reasonable market rates for any Google services that Google did
3 provide, such as distribution.

4 **Q.** So after Google rejected Fortnite with Epic's payment
5 system in it, what did Epic decide to do about that?

6 **A.** We had given up on our hopes of reaching customers outside
7 of Google Play nor of being able to launch our own billing
8 system under Google's policies, and so we decided to both
9 prepare for a challenge to the practices of Google and Apple,
10 and we prepared to submit Fortnite to the Google Play Store
11 using Google's billing service.

12 **Q.** Let me take those in pieces.

13 You talked about preparing a challenge to Google and
14 Apple's policies. Did this challenge have a name internally at
15 Epic?

16 **A.** Yes. We called the effort to challenge Google and Apple's
17 distribution policies Project Liberty.

18 **Q.** And what were the goals of Project Liberty?

19 **A.** We wanted to ensure that we and all developers had the
20 ability to distribute our own stores free of restrictions, such
21 as the scare screens that Google had introduced in front of
22 direct downloads from the web, and unequal terms with Google's
23 own services.

24 We wanted the ability to use our own payment service and
25 not be forced to use the platform's payment service.

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1 And we wanted to be able to freely deal with smartphone
2 manufacturers, OEMs, and carriers in order to do
3 preinstallation deals with them unfettered by Google's
4 contracts forbidding them from installing competing stores.

5 Q. Were there any risks -- were there any risks that Epic
6 believed it might face from pursuing this goal or this project?

7 A. Yes. We were about to challenge two of the most powerful
8 companies in history, and so we saw it as an enormously risky
9 strategy.

10 Q. So how did Epic prepare for this?

11 A. Well, first of all, we hired counsel, your firm, Cravath,
12 to represent us in the matter. We organized a technical team
13 to work on technical approaches by which we could challenge
14 Google's policies.

15 And we assembled a business team to work out the business
16 details and public relations details of explaining our decision
17 to the world, to our customers, to gamers, so that everybody
18 would understand why we were doing what we were doing.

19 Q. Now, you also said earlier that Epic launched Fortnite on
20 the Google Play Store; right?

21 A. Yes.

22 Q. And did Epic accept any kind of special terms or special
23 arrangement from Google to do so?

24 A. No.

25 Q. It just launched on the regular off-the-shelf rates and

1 terms?

2 **A.** That's right.

3 **Q.** Why did you do that?

4 **A.** Well, we had -- we'd given up on the idea that Android was
5 an open platform. I've called it a fake open platform several
6 times, and we realized in practice for a developer trying to
7 reach users, it was as closed a platform as Apple's platform,
8 and I wanted to challenge Google and Apple on equal terms,
9 treating them accordingly. And Fortnite was in the IOS app
10 store. I wanted it to be in the Google Play Store at the time
11 we challenged Google.

12 **Q.** When did Fortnite launch on the Google Play Store?

13 **A.** I believe it was April of 2020.

14 **Q.** And at that point in time, in April 2020, had Epic made a
15 final decision yet about how it was going to go about
16 challenging these policies?

17 **A.** No. We were considering a number of options at that
18 point.

19 **Q.** Did you eventually share with Google what it was you
20 wanted them to do in terms of changing their policies?

21 **A.** Yes. Before entering into an open confrontation with
22 Google, I prepared a letter to Google senior executives again
23 outlining exactly what Epic needed to get from Google in order
24 to avoid a conflict with them.

25 **Q.** All right. Mr. Sweeney, if you look in your binder in

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1 front of you at Exhibit 5488 please.

2 And the first e-mail on this chain beginning on page 2
3 appears to be from you on June 30, 2020. Do you see that?

4 **A.** Yes.

5 **Q.** And is this the e-mail you were just describing?

6 **A.** Yes.

7 **MR. BORNSTEIN:** Your Honor, I'd move the admission of
8 Exhibit 5488.

9 **MR. KRAVIS:** No objection.

10 **THE COURT:** It's admitted.

11 (Trial Exhibit 5488 received in evidence.)

12 **BY MR. BORNSTEIN:**

13 **Q.** And I see this is directed to Sundar Hiroshi, Jamie, and
14 Don. Who are those people?

15 **A.** These are Sundar Pichai, Google's CEO; Hiroshi Lockheimer,
16 the head of Android; Jamie Rosenberg, who's now a consultant;
17 and Don Harrison, who testified earlier today.

18 **Q.** And what was it that Epic was asking Google to do in this
19 e-mail?

20 **A.** Two big things. First of all, we wanted to be able to
21 distribute our game through Google Play without using Google's
22 payment system and without being forced to pay Google's fees.

23 **Q.** So let me just look. You've got two numbered paragraphs
24 here, Number 1 and Number 2. So what was the request in Number
25 1?

1 **A.** Number 1 was the ability to use our own payment service
2 and not pay Google's fees.

3 **Q.** And what was the request in Number 2?

4 **A.** We wanted to make our own app store available for Android.
5 We wanted to be able to distribute that app store both through
6 Google Play and through our website. We wanted the app store
7 to be able to operate with feature parity to Google Play, no
8 worse than Google Play, full access to the operating system as
9 Google Play has, and no scary warning screens as users were
10 using it.

11 **Q.** And you say at the bottom of that first page (as read):

12 "We hope that Google will also make these options
13 equally available to all Android developers in order to
14 make software sales and distribution on the Android mobile
15 platform as open and competitive as it is on personal
16 computers."

17 Why did you include that in your e-mail?

18 **A.** We didn't want a special deal for ourselves. I wanted
19 everybody -- every other developer to have the option of
20 distributing on Android the way that we wanted to distribute on
21 Android.

22 **Q.** Did Google agree to this proposal?

23 **A.** No.

24 **Q.** So what, if anything, did Epic do to follow through and
25 execute on your plan to challenge Google's policies?

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1 **A.** We came to a decision that we would launch our direct
2 payment mechanism into Fortnite without -- without Google's
3 permission and in violation of Google's policies.

4 **Q.** Whose idea was this, Mr. Sweeney?

5 **A.** This was my idea.

6 **Q.** Who gave the final approval to do this?

7 **A.** I did.

8 **Q.** So I want to break it down.

9 What specifically was it that you did to launch Epic
10 Direct Pay on Fortnite in the Google Play Store?

11 **A.** There are two ways of distributing software on Android.
12 The first way is to put an update through Google Play's
13 publishing -- or sorry -- distribution process; and the second
14 way to update software on Android is through what we call a
15 Hotfix, which is it doesn't change the code distributed by an
16 application but gives the existing one -- game or app,
17 instructions to change its behavior.

18 We distributed -- we put a version of Fortnite on
19 Google Play which contained our direct payment system but was
20 not activated. So at the time Google looked at that, they just
21 saw the same old Fortnite app that had been there the previous
22 version, but we launched a Hotfix which changed the behavior of
23 the app to introduce our direct payment service into Fortnite.

24 **Q.** So are Hotfixes a common tool in the industry?

25 **A.** Hotfixes are widely used by games and apps to update their

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1 behavior. For example, prior to this time, Fortnite would
2 release a Hotfix many times a week even.

3 **Q.** So to be clear, though, was this just an ordinary Hotfix?

4 **A.** No. This was an unusual kind of Hotfix, and it introduced
5 a major feature available into Fortnite without Google
6 reviewing it and without Google being aware that it was coming
7 and in violation of Google's policies.

8 **Q.** So why didn't you tell Google in advance?

9 **A.** We had gone through that process in 2019, and we -- and I
10 expected that if we submitted a version of Fortnite to Google
11 that had our payment service in place and they had reviewed it,
12 then Google would have simply rejected that version of Fortnite
13 and we would have never been able to give our direct payment
14 service directly to users and have it work for them.

15 **Q.** When did Epic activate the Hotfix?

16 **A.** We launched the Hotfix on August 13th, 2020.

17 **Q.** And how did that change the Fortnite experience for users?

18 **A.** Before the Hotfix, when you went to make a real money
19 purchase in Fortnite, you would be sent directly into the
20 Google Play payment screen, and you would go through
21 Google Play's normal payment flow.

22 But after the Hotfix, the moment you bought something, we
23 sent you to a payment choice screen which gave you the option
24 of either using Epic's direct payment service and receiving a
25 20 percent discount on your purchase compared to the prices as

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1 they were the day before, or you could choose to use Google's
2 payment service and pay the regular price.

3 **MR. BORNSTEIN:** Can we call up the Sweeney
4 demonstrative, please?

5 **BY MR. BORNSTEIN:**

6 **Q.** I want to ask you, Mr. Sweeney, is this what users saw
7 when they went to make a real money purchase after the Hotfix
8 was activated?

9 **A.** Yes, exactly.

10 **MR. BORNSTEIN:** And, Your Honor, we move the admission
11 of Exhibit 8045.

12 **MR. KRAVIS:** No objection.

13 **THE COURT:** It's admitted.

14 (Trial Exhibit 8045 received in evidence.)

15 **BY MR. BORNSTEIN:**

16 **Q.** Did some users choose the top option? Did they choose to
17 use Epic direct payment during the time that this was available
18 to them?

19 **A.** Yes.

20 **Q.** Do you know approximately what percentage of users chose
21 Epic's direct pay option?

22 **A.** Yes. Roughly 40 percent of users chose to use Epic direct
23 payment in the several hours in which both options were
24 available to them.

25 **Q.** So did -- you mentioned that you hadn't told Google in

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1 advance about this. Did you ever let Google know that Epic was
2 going down this road?

3 **A.** Yes. Once we launched the Hotfix, we took about
4 15 minutes to verify that it had been released and been
5 deployed to users on their phones, and then I sent an e-mail to
6 Google senior executives explaining that we'd launched this
7 Hotfix and that we introduced our payment service and
8 encouraging them to reconsider their payment policies.

9 **Q.** Why did you send that e-mail?

10 **A.** I wanted Google to understand exactly what we were doing
11 and why we were doing it.

12 **Q.** And how did Google respond to the activation of this
13 direct pay feature?

14 **A.** We didn't hear from them directly; but after about eight
15 hours, Google removed Fortnite from the Google Play Store.

16 **Q.** And is that what you expected them to do?

17 **A.** Well, Epic recognized a high probability that Google would
18 do that, but I was not certain and I still held out hope that
19 Google would reconsider its policies right then and there
20 rather than balking what I think was still the number one game
21 in the world from Google Play at that time.

22 **Q.** And after Google blocked Fortnite, what did Epic do in
23 response?

24 **A.** That same day we filed this lawsuit.

25 **Q.** Why, Mr. Sweeney, has Epic been pursuing this effort to

1 open the Android platform?

2 **A.** I think it's -- another issue that I see as existential to
3 all game developers, including Epic, in that these 30 percent
4 fees are enormous compared to the -- you know, all the other
5 costs of operating a game, and at least for Epic, constitute
6 more profit from our own game than we make ourselves.

7 I felt that the combination of these fees with inflating
8 prices and making our game less attractive and our payment
9 service less attractive and the restrictions on competing
10 stores meant that billions of users of Android smartphones in
11 the world weren't getting a fair deal, and millions of
12 developers on the Android platform were also being forced to
13 make business -- use services they didn't want and that made
14 their applications worse.

15 **Q.** Did you consider the possibility of just filing a lawsuit
16 without going through the whole Hotfix process?

17 **A.** Yes.

18 **Q.** Why did you not go that route? Why did you include this
19 Epic Direct Pay feature into Fortnite without telling Google?

20 **A.** I wanted to make it very clear to everybody, our customers
21 and the industry at large, exactly what was happening on these
22 platforms.

23 It is very easy to look at this and say, "Oh, there's a
24 smartphone and has a store, and that's just how the world
25 works"; but I don't think it was widely realized at the time

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1 the effect that these policies imposed by Google have on users
2 and on developers, and that the 30 percent fees are passed onto
3 customers as inflated costs. I wanted to demonstrate that by
4 giving customers a better deal with this 20 percent discount.

5 And also I wanted everybody to see and understand that
6 Google -- well, just focusing on Google, that Google exercised
7 de facto control over the availability of apps on Android, and
8 that by -- you know, they would enforce their policies by
9 denying developers access to the majority of Google -- of
10 Android users if the users didn't, you know, pay these fees to
11 them.

12 **Q.** Just a few more questions on one topic, Mr. Sweeney, which
13 is harm to Epic's business.

14 So in its capacity as a developer of games like Fortnite,
15 has Epic been harmed by these policies that you're challenging?

16 **A.** Yes.

17 **Q.** How, in your view, has Epic been harmed as a developer?

18 **A.** First of all, we're not able to distribute Fortnite to
19 customers the way we want, you know, through our website
20 without undue obstructions. We're not allowed to process
21 payments from customers the way that we want.

22 And then we're forced to pay 30 percent fees to
23 Google Play for their billing services instead of paying Visa,
24 MasterCard, or PayPal 2 or 3 or 4 percent for the equivalent
25 payment service.

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1 Q. And in Epic's capacity as the Epic Games store, has Epic
2 been harmed?

3 A. Yes.

4 Q. How so?

5 A. Well, first and foremost, Google's policies -- or Google's
6 technical countermeasures on Android, these scare screens, make
7 it too cumbersome to install a competing store so much that
8 most users are deterred from installing a competing store and
9 don't consider it when installing from the web.

10 And Google's practices, you know, these agreements with
11 carriers and OEMs which prevent these companies from
12 distributing competing stores with Google Play prevent us from
13 doing deals with these companies, which would let us compete
14 with Google in the market.

15 Q. And last, in its capacity as the developer of Epic Direct
16 Pay, the payment solution, has Epic been harmed by the policies
17 you're challenging?

18 A. Yes.

19 Q. How so?

20 A. Well, there are billions of Android smartphones. Each one
21 of those is a prospective user of Epic's direct payment
22 service; but because Google controls, you know, more than
23 90 percent of Google -- of software distribution to Android and
24 they prevent all competing payment services from being used for
25 digital purchases, we have no way to reach Android customers

1 with Epic Direct Pay for digital goods.

2 **Q.** So in light of the various harms that you've described,
3 how much money is Epic seeking to be awarded in this lawsuit?

4 **A.** Epic is not seeking any damages.

5 **Q.** So what outcome is Epic looking for here?

6 **A.** We want the jury to find that Google has violated the law
7 so that the Court can make Google stop enforcing these
8 policies.

9 **Q.** And from your perspective, what would the effect of that
10 be on Epic?

11 **A.** It would enable our business to expand and compete in a
12 wide variety of areas which are currently denied to us. First
13 of all, we could -- if we are able to put Fortnite back onto
14 the Google Play Store, then we could reach billions of users
15 who currently we have no effective way to reach.

16 We would be able to collect payments directly from
17 customers and charge better prices with these 30 percent fees
18 removed as we were for a period of time.

19 And we would -- I'm sorry -- and we would be able to both
20 pass along savings to customers and make more profit for
21 ourselves with this 30 percent.

22 **Q.** What would the effect be on the Epic Game Store if these
23 policies were changed?

24 **A.** Well, the Epic Game Store has already reached more than
25 67 million monthly active users on PC and Mac where we're able

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1 to compete. We would be able to compete on Android and reach a
2 much larger base of users. We'd be able to offer a unique
3 selection of games.

4 We'd be able to offer better deals for developers. Google
5 charges 30 percent. We charge 12 percent, and we only charge
6 any fee at all when developers choose to use our payment
7 service. So we would be able to compete on Android in the way
8 that we compete on PC and Mac today.

9 **Q.** And from your perspective, Mr. Sweeney, what would the
10 effect be on other developers besides Epic?

11 **A.** All other developers would have the same opportunity to do
12 what we're -- we would want to do if they choose to do so.

13 They would have a greater selection of stores to choose
14 from. Not just stores just in theory, but stores that are
15 really viable because the Android platform would be unleashed
16 with competing stores like ours and others. They would get
17 better deals, they would have more opportunity, and everybody
18 would benefit, even those who would choose to continue to
19 distribute through Google Play because the competition between
20 Google Play and other stores may well lead Google to make
21 better decisions.

22 **Q.** Thank you, Mr. Sweeney.

23 **MR. BORNSTEIN:** I have no further questions at this
24 time.

25 **THE COURT:** All right. Pass the witness.

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1 **MR. KRAVIS:** May we approach, Your Honor?

2 **THE COURT:** Yes.

3 **MR. KRAVIS:** Thank you.

4 **CROSS-EXAMINATION**

5 **BY MR. KRAVIS:**

6 **Q.** Good afternoon, Mr. Sweeney.

7 **A.** Good afternoon.

8 **Q.** I want to start by asking you about that 30 percent
9 service fee you mentioned.

10 I think you described it as a 30 percent cut that the
11 Google Play Store took when Fortnite was in the store. Did I
12 hear that right?

13 **A.** Yes.

14 **Q.** A 30 percent service fee is the most prevalent rate
15 charged by app stores; right?

16 **A.** Yes.

17 **Q.** We put together a little demonstrative to show how this
18 works. I'm going to put that up on the screen in front of you,
19 and if we could start at Slide 3.

20 Sony has a game store for the PlayStation; right?

21 **A.** Yes.

22 **Q.** And Fortnite is in the PlayStation Store; right?

23 **A.** That's right.

24 **Q.** And Epic pays Sony a 30 percent commission in the
25 PlayStation Store; right?

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1 **A.** Sony takes a 30 percent fee and then pays us.

2 **Q.** Epic uses Sony's billing system to process in-app
3 purchases in the PlayStation Store; right?

4 **A.** Yes.

5 **Q.** Sony does not allow Epic to use its own payment system in
6 the PlayStation Store; right?

7 **A.** Right.

8 **Q.** Sony does not allow a user to sideload a game on a
9 PlayStation; right?

10 **A.** That's right.

11 **Q.** And Sony does not allow other companies to put their own
12 app stores on the PlayStation; right?

13 **A.** Right.

14 **Q.** Let's talk about Microsoft. Microsoft has a game store
15 for the Xbox; right?

16 **A.** Yes.

17 **Q.** I think it's called maybe Xbox Live Marketplace. Do I
18 have that right?

19 **A.** It's had various names.

20 **Q.** In any event, Epic offers Fortnite in the Xbox store
21 whatever its name may be; right?

22 **A.** Yes.

23 **Q.** And Epic pays Microsoft a 30 percent commission on in-app
24 purchases in the Xbox store; right?

25 **A.** Microsoft collects the payment and pays Epic 70 percent,

1 so they take a 30 percent fee.

2 Q. And Epic uses Microsoft's billing system to process in-app
3 purchases in the Xbox store?

4 A. That's right.

5 Q. Microsoft does not allow Epic to use its own payment
6 system on Xbox, does it?

7 A. That's right.

8 Q. Microsoft does not allow a user to sideload?

9 A. Right.

10 Q. And Microsoft does not allow other companies to put their
11 own app stores on the Xbox; right?

12 A. Right.

13 Q. Let's talk Nintendo. Nintendo has a game store; right?

14 A. Yes.

15 Q. Epic makes Fortnite available in the Nintendo game store;
16 right?

17 A. Yes.

18 Q. Nintendo takes a 30 percent commission in the Nintendo
19 store; right?

20 A. Yes.

21 Q. Epic uses Nintendo's billing system to process in-app
22 purchases; right?

23 A. Yes.

24 Q. Nintendo does not allow Epic to offer its own payment
25 system; right?

1 A. Right.

2 Q. Nintendo does not allow users to sideload a game like on a
3 Nintendo Switch; right?

4 A. That's right.

5 Q. And Nintendo does not allow other companies to put their
6 own app stores on the Nintendo Switch; right?

7 A. Right.

8 Q. Now let's talk about Apple.

9 Epic -- or, let's say, Apple took a 30 percent service fee
10 when Fortnite was in the Apple App Store; right?

11 A. Yes.

12 Q. Epic used Apple's billing system to process in-app
13 purchases when Fortnite was in the app store; right?

14 A. Yes.

15 Q. Apple does not allow users to sideload apps on the
16 iPhone; right?

17 A. Right.

18 Q. Apple does not allow other companies to put their own app
19 stores on IOS; right?

20 A. That's right.

21 Q. And when Fortnite was in the Apple App Store, Apple did
22 not allow Epic to use its own billing system to process
23 transactions; right?

24 A. That's right.

25 Q. So now let's talk about the Play Store.

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1 As I think you testified previously, the Play Store kept a
2 30 percent service fee when Fortnite was in the store; right?

3 A. Yes.

4 Q. Android, though, does enable sideloading; right?

5 A. Yes.

6 Q. And third parties can create their own Android app stores;
7 right?

8 A. Yes.

9 Q. Okay. We can take that down.

10 Now -- actually, I'm sorry. Could we leave that up,
11 please?

12 On all of these consoles that we were just talking
13 about -- Sony, Microsoft, Nintendo -- they keep 30 percent and
14 Epic still makes plenty of money on these consoles; right?

15 A. Epic is currently losing money overall.

16 Q. Let me ask you about that.

17 Through the end of 2020, Epic had earned about
18 \$3.5 billion from in-app purchases through Fortnite on Xbox;
19 right?

20 A. Yes.

21 Q. Through the end of 2020, Epic had earned about \$6 billion
22 from in-app purchases through Fortnite on the PlayStation;
23 right?

24 A. Yes.

25 Q. All told, through 2020 Epic had paid that 30 percent

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1 commission on roughly \$12 billion that Epic earned through
2 Sony, Microsoft, and Nintendo; right?

3 A. Yes.

4 Q. So I want to ask you some questions now about how exactly
5 Epic makes that money.

6 Fortnite on all these platforms is free to download;
7 right?

8 A. That's right.

9 Q. And Fortnite is also free to play; right?

10 A. Yes.

11 Q. Users on all of these platforms can download the game and
12 they can play the game without paying any money; right?

13 A. Yes.

14 Q. In fact, many users who play Fortnite do not actually
15 spend any money in the game; right?

16 A. Yes.

17 Q. Epic makes its revenue off the game from the limited
18 number of users who spend money in the game; right?

19 A. 40 or 50 percent, yes.

20 Q. And there's nothing wrong with that; right?

21 A. No. We love having as many users as possible.

22 Q. Right. There's nothing wrong with making your revenue off
23 of a limited number of customers, is there?

24 A. No.

25 Q. In fact, a lot of games work this way; right?

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1 **A.** Yes.

2 **Q.** Fortnite is what is called a freemium model game; right?

3 **A.** Yes, that's right.

4 **Q.** A freemium game is one that is free to download and then
5 purchases can be made over the course of the game; right?

6 **A.** Yeah, that's right.

7 **Q.** The freemium model has made Epic Games what it is today;
8 right?

9 **A.** Among other things, but certainly responsible for our
10 biggest success by far.

11 **Q.** In fact, you, yourself, attribute a lot of Epic's -- you,
12 yourself, attribute a lot of Epic's success to Epic's decision
13 to make Fortnite available for free; right?

14 **A.** Oh, absolutely.

15 **Q.** And the service fee structure used by the Google Play
16 Store and these other app stores is what allows you to use the
17 freemium model for Fortnite; right?

18 **A.** Well, Google's rules allow us to distribute -- allowed us
19 to distribute Fortnite as a freemium game.

20 **Q.** Well, let me explain what I mean.

21 As we talked about a moment ago, there was a time in 2020
22 when Fortnite was available in the Play Store; right?

23 **A.** Yes.

24 **Q.** And during that time, during the time when Fortnite was
25 available in the Play Store, Epic did not have to pay Google a

1 fee when a user downloaded Fortnite from the Play Store; right?

2 **A.** That's right.

3 **Q.** And during that time, the user who downloaded the game
4 also did not have to pay a fee, an upfront fee, to Google when
5 the user downloaded Fortnite from the Play Store; right?

6 **A.** That's right.

7 **Q.** In other words, you don't have to pay an upfront fee, the
8 user doesn't have to pay an upfront fee, and that allows you to
9 distribute your game for free; right?

10 **A.** Well, Google's policy is Fortnite should be through
11 Google Play for free.

12 **Q.** I get that. My question is just a little bit different.

13 My question is: You do not have to pay a fee when a user
14 downloads. The user does not have to pay a fee when they
15 download. And so as a result of that, you are able to
16 distribute the game for free rather than charging the user
17 upfront; right? It's that model that let's you do that; right?

18 **A.** I'm sorry. The fact that Google doesn't force us to
19 charge money for our game enables us to distribute our game for
20 free.

21 **Q.** Yes. That's true; right?

22 **A.** Yes.

23 **Q.** Okay. Now I want to talk with you about how the freemium
24 model works in Fortnite.

25 Fortnite gives users the option to buy things inside the

1 game using virtual currency; right?

2 A. Yes.

3 Q. The virtual currency in Fortnite is called -- it's called
4 V-Bucks; right?

5 A. That's right.

6 Q. I learned about this from my son.

7 The idea here is that a player uses real money to buy
8 V-Bucks, and then the player can spend the V-Bucks to buy
9 things inside the game; right?

10 A. Exactly.

11 Q. Like skins or cosmetics, for example; right?

12 A. Yes.

13 Q. And skins, by the way, is like what your character looks
14 like in the game; right?

15 A. Yes.

16 Q. So you can spend the V-Bucks to sort of change your
17 character's physical experience in the game; right?

18 A. Exactly.

19 Q. And selling V-Bucks is how Epic makes money off of
20 Fortnite; right?

21 A. The vast majority of money from Fortnite, yes.

22 Q. And, by the way, it doesn't -- it doesn't cost Epic
23 anything to, like, print or generate a V-buck; right?

24 A. Well, the game costs a lot to operate, but V-Bucks can be
25 issued by Epic with no marginal cost.

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1 Q. Now, there are lots of different places that a user can go
2 to buy V-Bucks; right?

3 A. Yes.

4 Q. So let's go back to the slides for a second.

5 For example, a user can buy V-Bucks on Epic's website;
6 right?

7 A. Yes.

8 Q. And a user can also buy V-Bucks on a -- in the game -- on
9 a gaming console, like the ones we were looking at earlier?

10 The Xbox or the Switch or the PlayStation; right?

11 A. If the user owns one, then, yes.

12 Q. Yes. And a user can also buy V-Bucks when they're playing
13 the game on a PC; right?

14 A. If they own a PC, yes.

15 Q. And a user can also buy V-Bucks at a physical
16 brick-and-mortar store; right?

17 A. Yes.

18 Q. In the front pocket of your exhibit binder there should be
19 a card there in the very front pocket. If you could maybe
20 check and pull it out.

21 Do you see the card? There it is. It's labeled -- we
22 labeled it as Exhibit 9061. That's what it looks like when you
23 go into, like, the brick-and-mortar store and you buy yourself
24 some V-Bucks; right?

25 A. That's right.

1 Q. Now, on Android, a user can also sideload Fortnite on
2 their phone and then they can buy V-Bucks in the sideloaded
3 app; right?

4 A. Yes.

5 Q. And on Android, a user can also buy V-Bucks in the app
6 downloaded from the Samsung Galaxy Store; right?

7 A. Yes.

8 Q. And during the time that Fortnite was in the Play Store, a
9 user could buy V-Bucks in any of these places and then spend
10 the V-Bucks in the Fortnite app that they downloaded from the
11 Play Store; right?

12 A. I'm sorry. Could you repeat the question?

13 Q. Yeah. Let me just try to make it a little bit clearer.

14 So if I'm a user, I can go onto Epic's website and buy
15 some V-Bucks on Epic's website. I can do that; right?

16 A. Yes.

17 Q. And then I can open up my phone, my Android phone, and I
18 can go to the Play Store -- this was when Fortnite was in the
19 store -- and I can download the Fortnite app from the
20 Play Store; right?

21 A. That's right.

22 Q. And then I can open the Fortnite app that I downloaded
23 from the Play Store, and I can spend those V-Bucks that I
24 bought on Epic's website in the app that I downloaded from the
25 Play Store; right?

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1 **A.** Yes.

2 **Q.** And in that circumstance, I, the user -- excuse me.

3 In that circumstance, Epic does not pay the Google Play
4 Store any service fee; right?

5 **A.** That's right.

6 **Q.** And except for the Google Play Store itself, that's true
7 of all of the places to buy V-Bucks that we see on the screen;
8 right?

9 **A.** There's one exception. The Nintendo Switch platform
10 doesn't allow this, but it's true in the case of all of the
11 other stores here.

12 **Q.** So setting aside Nintendo, in any one of these
13 locations -- Epic's website, the other gaming consoles, the
14 computer, the physical store, the sideloaded app, the Samsung
15 Galaxy Store -- I can go to one of those locations, I can buy
16 some V-Bucks, I can download the Fortnite app from the
17 Play Store, I can open the app, I can spend the V-Bucks, and
18 Epic pays Google no service fee; right?

19 **A.** That's right.

20 **Q.** The only circumstance when Epic does pay Google the
21 service fee is when the V-Bucks are purchased in the app that's
22 downloaded from the Play Store; right?

23 **A.** Right.

24 **Q.** Now let me ask you some questions about that service fee.

25 You were here for the opening statements in this case;

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1 right?

2 A. Yes.

3 Q. And can we go to the next slide.

4 You saw Epic's counsel use this slide in the opening
5 statement; right?

6 A. Yes.

7 Q. Mr. Sweeney, you do not believe that this is a fair
8 comparison, do you?

9 A. This is excluding the cost of bandwidth, I think.

10 Compared to the Epic Game Store, for example, we're missing the
11 cost of bandwidth.

12 Q. Yeah. Just to make sure I have this 100 percent clear,
13 you do not believe that the comparison on this slide is a fair
14 comparison, do you?

15 A. Yes. Well, hang on. Sorry. If -- in the world where
16 these payments are a la carte, then it's a completely fair
17 comparison because it's a fee on top of payments made.

18 Q. I'm just talking about the world as it exists today. Do
19 you believe this is a fair comparison?

20 A. Well, I think if you were comparing the all-in cost of
21 things, I think you're just missing a bandwidth cost, which we
22 find is in the 1 percent range.

23 Q. I'm not asking you as we sit here today. Not taking out
24 any costs. Just in the world as we sit here today. Not taking
25 out any costs, just in the world as we sit here, do you think

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1 this is a fair comparison or no?

2 **A.** I think it's fair.

3 **Q.** Okay. Well, let me ask you about that.

4 The Epic Game Store, that's your game store; right?

5 **A.** Yes.

6 **Q.** The Epic Game Store collects 12 percent service fee on
7 in-app purchases that are made using Epic's billing system;
8 right?

9 **A.** That's right.

10 **Q.** And the 15 and the 30 percent you see on the right there
11 with Google, you understand that those are meant to represent
12 the service fees that Google collects in the Google Play Store;
13 right?

14 **A.** Yes.

15 **Q.** Now, the 12 percent fee that you collect in the Epic Game
16 Store is not just for payment processing, is it, Mr. Sweeney?

17 **A.** No. It includes other services and profit for Epic too.

18 **Q.** Right. It's not just a payment processing fee; right?

19 **A.** That's right.

20 **Q.** In fact, you remember when Mr. Allison testified back on
21 the first day of trial?

22 **A.** Yes.

23 **Q.** Mr. Allison is the head of the Epic Game Store; right?

24 **A.** He is.

25 **Q.** And you heard Mr. Allison agree comparing to Epic's

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1 service fee to a payment processing fee is an apples-to-oranges
2 comparison; right?

3 **A.** Yes, I did.

4 **Q.** And the reason it's an apples-to-oranges comparison is
5 because a payment processor does not give the developer the
6 ability to distribute a game to 60 million users; right?

7 **A.** Yes.

8 **Q.** And, Mr. Sweeney, what's true for the service fee in your
9 store is also true for the service fee in our store; right?
10 The fee is not just a payment processing fee in either store;
11 right?

12 **A.** Google provides a variety of services, and then they force
13 everybody to pay 15 or 30 percent. Yes, you could account for
14 it however you might.

15 **Q.** So I just want to make sure I have the answer clear. The
16 same thing that's true in your store is also true in our store.
17 The service fee is not just a payment processing fee; right?

18 **A.** Yes.

19 **Q.** Now, you were in the courtroom earlier today. There was
20 some testimony about Activision. Do you remember that?

21 **A.** Yes.

22 **Q.** And there were some questions about whether Google paid
23 Activision not to open an app store. Do you remember those
24 questions?

25 **A.** Yes.

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1 Q. Mr. Sweeney, you, yourself, do not believe that Activision
2 really intended to open an app store, do you?

3 A. I'm not certain, but I was -- I have questioned
4 Activision's intent throughout the time they were proposing to
5 us to build an app store together.

6 Q. Right. That's what I'm talking about.

7 So you had a conversation with a fellow at Activision by
8 the name of Armin Zerza; right?

9 A. Yes.

10 Q. And your conversation with Mr. Zerza included discussion
11 of the possibility of Epic and Activision opening an app store
12 together -- an Android app store together; right?

13 A. Yes.

14 Q. Those talks ended several years ago; correct?

15 A. Yes.

16 Q. And the reason those talks ended, Mr. Sweeney, is because
17 Epic did not trust Activision to partner with Epic on an app
18 store; right?

19 A. Yes, exactly.

20 Q. Epic came to that realization after your call with
21 Mr. Zerza; right?

22 A. Yes, after many conversations with Armin Zerza.

23 Q. After those conversations, you had concerns that
24 Activision would use the talks with Epic as a negotiating foil;
25 right?

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1 A. Yes, I did.

2 Q. And what you meant by that was that you believed that
3 Activision just intended to negotiate something with Epic and
4 then take it to Google and use that as leverage to get a better
5 deal with Google; right?

6 A. Well, I wasn't certain of that, but I was suspicious and
7 felt that that was likely what they were doing.

8 Q. And as a result of that, you did not trust Activision to
9 partner with you on an app store; right?

10 A. Yes.

11 Q. Mr. Sweeney, have you heard of a company called Tencent?

12 A. Yes.

13 Q. Tencent is a Chinese company; right?

14 A. Yes.

15 Q. Tencent is a significant investor in Epic Games; right?

16 A. Yes.

17 Q. Tencent holds two of the five seats on Epic's board of
18 directors; right?

19 A. Yes.

20 Q. Tencent has an app store; right?

21 A. Tencent has a number of app distribution vehicles.

22 Q. And in Tencent's app distribution vehicles, Tencent
23 charges a service fee of up to 55 percent; right?

24 A. I'm not familiar with their distribution service.

25 Q. By the way, Tencent also has a Project Hug agreement with

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1 Google; right?

2 A. Yes. I saw them on that list.

3 Q. Now, I want to talk with you about 2018.

4 You testified, I think on direct examination, that Epic
5 did not get as many users as it had hoped when it launched
6 Fortnite on Android in 2018. Did I hear that correctly?

7 A. Yes.

8 Q. I think you described it as a, quote, "depressing
9 process." Did I hear that right?

10 A. Yes.

11 Q. And one of the concerns you mentioned was that Fortnite
12 actually does not work on all that many Android devices; right?

13 A. I testified that Fortnite we had estimated in 2018 that it
14 worked on around -- it would work on around 400 million of the
15 2 billion Android devices.

16 Q. I heard you say that number on direct, 400 million.

17 The estimate that you had was actually closer to half
18 that, wasn't it?

19 A. There was an earlier estimate before we optimized Fortnite
20 to run better.

21 Q. Let me show you what I mean.

22 Can you take a look in your binder, please, at
23 Exhibit 5520?

24 A. Yes.

25 Q. Are you with me?

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1 Mr. Sweeney, this is an e-mail exchange that you had with
2 Mr. Rosenberg and others in June of 2018; right?

3 **A.** Yes.

4 **Q.** Actually, I believe this is already in evidence, so I
5 think we can put it up on the screen.

6 **THE CLERK:** It is not.

7 **MR. KRAVIS:** Oh, I'm sorry. At this time we move
8 Trial Exhibit 5520 into evidence.

9 **MR. BORNSTEIN:** No objection, Your Honor.

10 **THE COURT:** It's admitted.

11 (Trial Exhibit 5520 received in evidence.)

12 **BY MR. KRAVIS:**

13 **Q.** Now, I think on direct examination your counsel was asking
14 you some questions about an e-mail you wrote on June 22nd,
15 2018, at 8:43 a.m. About two-thirds of the way down the page.
16 Do you see it?

17 **A.** Yes.

18 **Q.** And this is an e-mail that you wrote to Mr. Rosenberg and
19 others at Google; right?

20 **A.** Yes.

21 **Q.** And this is shortly before Epic launched Fortnite on
22 Android; right?

23 **A.** Yes.

24 **Q.** And as we talked about a moment ago, that was a launch
25 that occurred in the Samsung Galaxy Store and on the website

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1 but not in the Google Play Store; right?

2 A. Yes.

3 Q. All right. So I want to direct your attention to the
4 section that says "Fortnite Launch Plan." Do you see that?

5 A. Yes.

6 Q. And I want to direct your attention to the second bullet
7 under "Fortnite Launch Plan." Do you see that?

8 A. Yes.

9 Q. It says (as read):

10 "Launch scale will be limited due to market size."

11 Do you see that?

12 A. Yes.

13 Q. And then it says (as read):

14 "We estimate approximately 200 million

15 Fortnite-capable Android devices worldwide."

16 Do you see that?

17 A. Yes.

18 Q. The number here is 200 million, not 400 million; right?

19 A. That's right.

20 Q. And "Fortnite-capable Android devices" means exactly what
21 it sounds like; right? These are the Android devices in the
22 world that are capable of running Fortnite; right?

23 A. I would say capable of running Fortnite adequately for a
24 user to be satisfied with it.

25 Q. And the next thing you say there is (as read):

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1 "Versus to approximately 600 million Fortnite capable
2 IOS devices."

3 Do you see that?

4 **A.** Yes.

5 **Q.** IOS devices are like Apple devices; right?

6 **A.** Yes.

7 **Q.** Like an iPhone is an IOS device; right?

8 **A.** That's right.

9 **Q.** And so in this e-mail to Mr. Rosenberg, you were telling
10 him that your estimate at that time is that Fortnite will run
11 on about one-third the number of IOS devices it can run on;
12 right?

13 **A.** That's right.

14 **Q.** And the next thing you say is (as read):

15 "And approximately 1 billion" --

16 Am I saying this right? Is it PUBG?

17 **A.** Yes.

18 **Q.** (as read):

19 "And approximately 1 billion PUBG-capable Android
20 devices."

21 Did I read that correctly?

22 **A.** Yes.

23 **Q.** PUBG is another video game; right?

24 **A.** Yes.

25 **Q.** It's a little bit like Fortnite but different?

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1 **A.** Yeah. It's another battle royale game.

2 **Q.** And in this e-mail to Mr. Rosenberg, you're telling him
3 that your estimate is that Fortnite will run on about one-fifth
4 as many Android devices as PUBG runs on at that time; right?

5 **A.** Yes.

6 **Q.** Now, I think I heard you testify on direct examination
7 that at this time in your estimate -- sorry, can we leave that
8 up please? -- at this time in your estimate there were, like,
9 2 billion Android phones in the world. Did I hear you say that
10 right?

11 **A.** Yes.

12 **Q.** So at this time the estimate that you are giving to
13 Mr. Rosenberg shortly before the Fortnite launch on Android is
14 that the game is only going to work on about 10 percent of the
15 Android phones out there; right?

16 **A.** Yes, using rough numbers.

17 **Q.** And, by the way, this isn't because of anything that
18 Google did; right? This is just how the game works; right?

19 **A.** That's right.

20 **MR. KRAVIS:** Now we can take that one down. Thank
21 you?

22 **THE COURT:** Let's take our afternoon break. We'll be
23 back at a little bit before 2:15.

24 **THE CLERK:** All rise.

25 (Recess taken at 1:56 p.m.)

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1 (Proceedings resumed at 2:15 p.m.)

2 (Proceedings were heard out of the presence of the jury:)

3 **THE COURT:** What is the issue?

4 **MR. POMERANTZ:** Your Honor, I'm not sure there is an
5 issue. I think we've reached agreement, but if I could hand up
6 the document that's at issue to Your Honor.

7 **THE COURT:** Oh, all right.

8 (Pause in proceedings.)

9 **THE COURT:** Okay.

10 **MR. POMERANTZ:** So last week we discussed
11 Exhibit 1616, which is behind the second tab, and in particular
12 the numbers that are on pages 61 and 62 of that document, which
13 I have flagged in your book there.

14 **THE COURT:** Yes.

15 **MR. POMERANTZ:** And the question was whether Ms. Porat
16 in her deposition had laid the foundation for these numbers.

17 **THE COURT:** Oh, that's right. Yep.

18 **MR. POMERANTZ:** And what we have worked out between
19 counsel is a way of getting around that foundation objection,
20 and we just wanted to lay it out for Your Honor.

21 **THE COURT:** Okay.

22 **MR. POMERANTZ:** We would drop our foundation
23 objection. They would play the deposition. The document would
24 come into evidence.

25 Epic's counsel would not show these numbers in court and

1 would not -- and would not have the witness say them orally,
2 but they would be available to the jury, both during the
3 questioning and at the conclusion of evidence, so that they
4 could see them.

5 And then we would deal with the sealing issue after trial,
6 and that's not an issue for today.

7 And so the reason why we're treating it this way is
8 because these numbers would require some explanation. They're
9 not ordinary numbers that Google puts together. They're a
10 one-off analysis. We have found the person who actually knows
11 about it.

12 So one alternative was to bring that person in, but we
13 thought that that was a sideshow and that we would be able to
14 allow this case to move more efficiently if we let them use the
15 document as the way that they were planning on, which is really
16 just to set the stage for their accounting expert.

17 And so we would be willing to allow this document to come
18 in with the foundation from Ms. Porat, which we don't think is
19 really foundation but we just don't think it's worth the fight,
20 as long as these numbers, which are very sensitive, are not the
21 way that Google discloses these numbers publicly, and this is a
22 one-off analysis by somebody who is available to be here if
23 necessary, but we think that would be an unnecessary sideshow.

24 And I think counsel for Epic is okay with this approach.

25 **THE COURT:** Well, what's the economist going to do

1 with these?

2 **MR. BORNSTEIN:** Your Honor, the accountant is going
3 to -- not the economist, the accountant is going to use them to
4 show that his profit calculations, which he will be testifying
5 about in open court, tie out to the publicly reported Google
6 financial numbers in order to show that all of the costs
7 associated with Play are properly being accounted for in his
8 analysis.

9 **THE COURT:** Is he going to rely on this chart?

10 **MR. BORNSTEIN:** He's going to rely on some of those
11 numbers, yes, Your Honor.

12 **THE COURT:** So the jury is never going to see this
13 then; right?

14 **MR. BORNSTEIN:** Well, no. The idea is that the jury
15 would see those numbers. And the accommodation that we've
16 agreed to make to Google subject to Your Honor's approval, of
17 course, is that we would not show those numbers to the public
18 and we would ask the accountant not to say the relevant numbers
19 out loud, but he would testify to his methodology, to his use
20 of the numbers, and to the ultimate numbers that he concludes
21 the proper profit.

22 **THE COURT:** What's the basis for that? Why is that
23 being -- all right. It may not be what you normally do, but
24 that's not a grounds for sealing.

25 **MR. POMERANTZ:** Well, the reason is that in order to

1 have these numbers explained to deal with the foundation
2 objection, we would want the other person to come in, which
3 Your Honor invited the person who actually created the
4 document, and then he would explain the basis of these numbers.
5 And if that is the case, then we think that can be done
6 publicly because then the basis of these numbers -- because
7 they're not the same as the publicly reported numbers except
8 that bottom-line total, and so we would just want that --

9 **THE COURT:** I'm not sealing anything for convenience.
10 Okay? So if you're just trying to skip a witness and that's
11 the basis for sealing, that's not -- it's denied.

12 **MR. POMERANTZ:** And it's --

13 **THE COURT:** You can bring that person in. I haven't
14 heard any basis for sealing. All you're telling me is that
15 you're hoping to streamline things and just kind of hop over
16 this, but that's not a ground for sealing.

17 **MR. BORNSTEIN:** For what it's worth, Your Honor, we do
18 think there is foundation already for this, which is another
19 way to streamline things, is just to let it in through
20 Ms. Porat over the foundation objection that's been raised.

21 **MR. POMERANTZ:** And, Your Honor, we do not think
22 there's foundation; and if these numbers are going to be put in
23 front of the witness and the jury and public, the person who
24 actually created the document should just come in here and say
25 "This is what I did." And that would lay the proper

1 foundation, and he is available to be here tomorrow.

2 **THE COURT:** Hold on, please. I'll need to hear the
3 deposition, and then I'll decide if there's foundation.

4 **MR. BORNSTEIN:** Certainly, Your Honor.

5 **THE COURT:** But based on what you told me last week,
6 it didn't sound like. I'll listen with fresh attention; but if
7 I say no, then you're going to have to bring the person in.

8 **MR. BORNSTEIN:** That's fine, Your Honor.

9 And for your convenience, when you look at the deposition,
10 the relevant pages, I think most important pages, are 132 and
11 133. We can submit that together with the transcript.

12 **THE COURT:** I won't remember this.

13 **MR. POMERANTZ:** I can double-check, but I believe your
14 binder that I just handed to you --

15 **THE COURT:** Which one?

16 **MR. POMERANTZ:** -- behind the first tab has the
17 deposition -- relevant deposition pages by both parties, but
18 I'll double-check that to make sure.

19 **THE COURT:** What page? 132?

20 **MR. POMERANTZ:** Well, it starts on 128, Your Honor,
21 and goes through 136, and they're all there. I believe 128
22 through 136 is in your binder.

23 **THE COURT:** Mr. Bornstein, you said 132?

24 **MR. BORNSTEIN:** Yes, Your Honor. The portions I would
25 direct the Court to are 132, line 18, through 133, line 4; and

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1 then there is some foundation that precedes that as well where
2 the witness talks about her familiarity with the process and
3 the people involved --

4 **MR. POMERANTZ:** Your Honor --

5 **MR. BORNSTEIN:** -- including that this -- she assumes
6 it would have come to her. That's on pages 130 and 131.

7 **MR. POMERANTZ:** Your Honor, I agree with
8 Mr. Bornstein.

9 I have, just in terms of my notes, pages 130, 131, 132,
10 and 134 have relevant testimony that we believe shows there's
11 not foundation through Ms. Porat, but this other person would
12 be able to lay the foundation and explain these numbers that
13 Ms. Porat never does, and he is available to be here tomorrow
14 for very brief testimony in advance of their accounting expert.

15 **THE COURT:** All right. Let's resume with this
16 witness, and I'll let you know.

17 **MR. POMERANTZ:** Thank you, Your Honor.

18 (Proceedings were heard in the presence of the jury:)

19 **THE COURT:** Go ahead.

20 **MR. KRAVIS:** Thank you, Your Honor.

21 **BY MR. KRAVIS:**

22 **Q.** Mr. Sweeney, when we broke, we were talking about the 2018
23 launch of Fortnite on Android. Do you remember that?

24 **A.** Yes.

25 **Q.** That 2018 launch included putting Fortnite in the Samsung

1 Galaxy Store; right?

2 A. Right.

3 Q. And as part of that deal to get Fortnite into the
4 Galaxy Store, Epic negotiated a favorable revenue sharing
5 agreement with Samsung; right?

6 A. That's right.

7 Q. The deal that Epic got was that it would pay a 12 percent
8 service fee on purchases through Fortnite downloaded from the
9 Galaxy Store; right?

10 A. Yes.

11 Q. Now, I heard you use terms in your direct exam like
12 "crooked arrangement" and "special deal." Just to be clear,
13 this was a special deal that Samsung gave Epic; right?

14 A. This was a special deal.

15 Q. The service fee of 12 percent is lower than what the
16 Samsung Galaxy Store usually charges; right?

17 A. That's right.

18 Q. And Epic took that special deal from Samsung; right?

19 A. We did.

20 Q. Now, at the time of this 2018 launch, Samsung wanted a
21 commitment from Epic that Epic would not put Fortnite in the
22 Play Store; right?

23 A. Yes.

24 Q. And Epic did not agree to that; right?

25 A. That's right.

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1 **Q.** And, in fact, in 2020, you told Samsung that you would be
2 putting Fortnite in the Play Store; right?

3 **A.** I think that was 2019, but we did tell them at some point
4 in that time frame that we were planning to put Fortnite in the
5 Google Play Store.

6 **Q.** Well, let me show you an exhibit. Could you turn in your
7 binder, please, to Exhibit 9200?

8 **A.** I'm sorry. I'm bad at this.

9 Here it is. I see it.

10 (Witness examines document.) Yeah, you're right. It was
11 2020.

12 **Q.** Mr. Sweeney, do you recognize that as an e-mail exchange
13 between you and some folks at Samsung from May of 2020?

14 **A.** Yes.

15 **MR. KRAVIS:** At this time we move Trial Exhibit 9200
16 into evidence, Your Honor.

17 **MR. BORNSTEIN:** No objection, Your Honor.

18 **THE COURT:** It's admitted.

19 (Trial Exhibit 9200 received in evidence.)

20 **BY MR. KRAVIS:**

21 **Q.** Okay. Now, Mr. Sweeney, this is the e-mail exchange we
22 were just talking about; right?

23 **A.** Yes.

24 **Q.** This is an e-mail exchange between you and some folks at
25 Samsung about your decision to launch -- to put Fortnite in the

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1 Google Play Store in 2020; right?

2 A. Yes.

3 Q. And it would be fair to say that the folks at Samsung were
4 not happy about that decision; right?

5 A. Yes.

6 Q. In fact, Samsung told you that they were going to have to
7 reassess their relationship with Epic based on the decision to
8 put Fortnite in the Google Play Store; right?

9 A. Yes.

10 Q. So let's take a look. If you can turn to page 3 of the
11 exhibit you have in front of you.

12 Do you see there's an e-mail from you to someone named DJ
13 Koh at Samsung?

14 A. Yes.

15 Q. It's dated April 21st of 2020; right?

16 A. Yes.

17 Q. This is the e-mail where you advise Samsung that Epic
18 would be putting Fortnite in the Google Play Store; right?

19 A. Yes.

20 Q. And then if you look on page 2, there's an e-mail from two
21 days later, April 23rd, 2020. Do you see that?

22 A. Yes.

23 Q. That's written to you from TM Roh, the guy at Samsung;
24 right?

25 A. Yes.

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1 Q. And if we could just get that entire e-mail there, please.

2 Mr. Sweeney, I'm going to direct your attention to the
3 third paragraph. The third paragraph starts, quote (as read):

4 "Having said that, I do believe that our partnership
5 that was formed a year and a half ago was predicated on an
6 understanding that Epic Games would not be supporting the
7 Google Play Store."

8 Do you see that?

9 A. Yes.

10 Q. And then the next sentence reads, quote (as read):

11 "In light of your recent decision, I think we need to
12 reassess the existing partnership terms to ensure that our
13 two companies' interests are realigned."

14 Did I read that correctly?

15 A. Yes.

16 Q. This is what we were talking about before; right? This is
17 Samsung telling you that they want to rethink their partnership
18 with you based on your decision to put Fortnite in the
19 Play Store; right?

20 A. That's right.

21 Q. And the next paragraph starts, quote (as read):

22 "The Galaxy Store has made many improvements and
23 added new product features that will greatly improve
24 publisher game performance, and I believe your games will
25 greatly benefit from these enhancements in our store."

1 Did I read that correctly?

2 **A.** Yes.

3 **Q.** So when you told Samsung that you were going to put
4 Fortnite in the Play Store, they wrote back and told you "We've
5 added features to the store and we think your game will
6 benefit"? That's what they told you; right?

7 **A.** Yes.

8 **Q.** And in the next sentence, the next sentence reads, quote
9 (as read):

10 "We will continue to invest in our gaming service,
11 and I sincerely hope that we can continue to develop a
12 strategic partnership with you to unlock these
13 opportunities."

14 Did I read that correctly?

15 **A.** Yes.

16 **Q.** So if we take that whole paragraph together, in this
17 paragraph the Samsung folks are, like, selling you on the
18 Galaxy Store; right?

19 **A.** Yes.

20 **Q.** Now, you were in the courtroom last week when Jim
21 Kolotouros and Jamie Rosenberg testified about Project Banyan;
22 right?

23 **A.** Yes.

24 **Q.** And you saw the e-mails and documents showing that
25 Project Banyan was something that was going on in 2019; right?

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1 A. Yes.

2 Q. This e-mail chain is from 2020; right?

3 A. That's right.

4 Q. Now, today you're still in an ongoing partnership with
5 Fortnite on Samsung phones; right?

6 A. Yes, we are.

7 Q. That partnership includes distributing Fortnite in the
8 Samsung Galaxy Store; right?

9 A. Yes.

10 Q. And that partnership includes preloading Fortnite on
11 Samsung phones; right?

12 A. Yes.

13 Q. And from your perspective, the relationship between Epic
14 and Samsung today is excellent; right?

15 A. Yes.

16 Q. Okay. Let's talk about Project Liberty.

17 You were responsible for Epic deciding to pursue
18 Project Liberty; right?

19 A. Yes, I am.

20 Q. And, in fact, you asked the team to keep you in the loop
21 on the topic 100 percent; right?

22 A. I believe I asked to be in on all major conversations.

23 Q. Let me show you what I'm talking about. If you could turn
24 to Exhibit 10684 in the binder please.

25 A. (Witness examines document.)

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1 **Q.** Are you with me?

2 **A.** Yes.

3 **Q.** Okay. This is an e-mail chain from May of 2020; right?

4 **A.** Yes.

5 **Q.** You're on the e-mail chain; right?

6 **A.** I am.

7 **Q.** And this is an e-mail chain about the conduct that we've
8 been talking about calling Project Liberty; right?

9 **A.** Yes.

10 **MR. KRAVIS:** At this time we move 10684 into evidence?

11 **MR. BORNSTEIN:** There's no objection, Your Honor.

12 **THE COURT:** It is admitted.

13 (Trial Exhibit 10684 received in evidence.)

14 **BY MR. KRAVIS:**

15 **Q.** And, Mr. Sweeney, I'm going to direct your attention to
16 the e-mail on the bottom of page 1.

17 This is an e-mail that you wrote on May 11th, 2020, at
18 12:44 p.m.; right?

19 **A.** Yes.

20 **Q.** And as we were talking about a moment ago, this e-mail
21 chain involves the conduct that we've been describing under the
22 name Project Liberty; right?

23 **A.** Yes. These are planning meetings for Project Liberty.

24 **Q.** And in the e-mail you write (as read):

25 "Hi, Ed. I don't seem to be invited to a Wednesday

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1 meeting. Please add me to all meetings on the topic.

2 Please keep me in the loop on this topic 100 percent."

3 Did I read that correctly?

4 **A.** Yes.

5 **Q.** Okay. So let's walk through the timeline of events here.

6 I think you testified about this on direct examination.

7 Epic submitted a version of Fortnite to the Google Play Store
8 in December of 2019; right?

9 **A.** Yes.

10 **Q.** And just to sort of set the stage here, at that time in
11 December 2019, Fortnite was available for download in the
12 Samsung Galaxy Store; right?

13 **A.** Yes.

14 **Q.** And for Android devices, Fortnite was available for direct
15 download from Epic's website; right?

16 **A.** Right.

17 **Q.** And at this time Fortnite was also available in the Apple
18 App Store; right?

19 **A.** Yes.

20 **Q.** I think you testified that Fortnite first came to the
21 Apple App Store in March of 2018; right?

22 **A.** That's right.

23 **Q.** And the version of Fortnite that Epic submitted to the
24 Google Play Store in December of 2019 was rejected by Google;
25 right?

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1 **A.** Yes. Twice.

2 **Q.** And you knew that the version had been rejected because
3 you saw the e-mail from the Google Play Store rejecting that
4 version of Fortnite; correct?

5 **A.** We distributed -- we provided two versions of Fortnite to
6 the Google Play Store, and they rejected both.

7 **Q.** So just to make sure we're talking about the same one,
8 take a look at Exhibit 10026 in your binder.

9 **A.** (Witness examines document.) Okay.

10 **Q.** Mr. Sweeney, this is an e-mail chain about one of those
11 rejections; correct?

12 **A.** Yes.

13 **Q.** And you're on the top e-mail there; right? The one from
14 you to Mr. Lockheimer?

15 **A.** Right.

16 **Q.** All right.

17 **MR. KRAVIS:** At this time we move Trial Exhibit 10026
18 into evidence.

19 **MR. BORNSTEIN:** No objection, Your Honor.

20 **THE COURT:** It's admitted.

21 (Trial Exhibit 10026 received in evidence.)

22 **BY MR. KRAVIS:**

23 **Q.** Okay. So the top e-mail here is written by you; right?

24 **A.** Yes.

25 **Q.** On January 13th, 2020; right?

1 **A.** Right.

2 **Q.** It is written to Hiroshi Lockheimer and then some other
3 folks from Google are on the cc line; right?

4 **A.** Right.

5 **Q.** And if you look down in the first page, you will see that
6 your e-mail to Mr. Lockheimer and others is actually forwarding
7 another e-mail. Do you see that on the bottom of page 1?

8 **A.** Yes.

9 **Q.** And if you flip to page 2, you can see that the e-mail
10 that you are forwarding to Mr. Lockheimer is signed by the
11 Google Play team; right?

12 **A.** Right.

13 **Q.** And then if you go back to page 1, you'll see that the
14 e-mail that you're forwarding is written to someone named
15 Haseeb; right?

16 **A.** Yes. Haseeb Malik.

17 **Q.** Haseeb Malik was Epic's mobile publishing director; is
18 that right?

19 **A.** Yes.

20 **Q.** And if you look at the bold text under "Thanks for your
21 patience," it reads (as read):

22 "Status of Fortnite (com.epicgames.fortnite):

23 Suspended from Google Play due to policy violation."

24 Right?

25 **A.** Yes.

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1 Q. And if you look further into the e-mail, it explains
2 exactly what the policy violation is; right?

3 A. It explains Google's reasons for rejecting the app.

4 Q. And if you look at the second page of the document, do you
5 see the paragraph that begins "Please note that all app
6 submissions..." Do you see that?

7 A. Yes.

8 Q. The first sentence reads (as read):

9 "Please note that all app submissions must comply
10 with the developer program policies."

11 Did I read that correctly?

12 A. Yes.

13 Q. And then the e-mail goes on to say a little bit further
14 down, a couple sentences later (as read):

15 "Your app continues to violate payments policy, which
16 generally prohibits games published on Google Play from
17 providing a payment method other than Google Play Billing
18 to purchase in-app virtual currency or in-app digital
19 downloads."

20 Did I read that correctly?

21 A. Yes.

22 Q. Now, you saw this e-mail; right?

23 A. Yes.

24 Q. You know you saw it because you forwarded it to
25 Mr. Lockheimer a little bit later; right?

1 A. That's right.

2 Q. And you understood this sentence that we've highlighted
3 here, "Specifically your app continues to violate payments
4 policy," you understood what this sentence meant; right?

5 A. Yes.

6 Q. You know what in-app virtual currency is; right?

7 A. Yes.

8 Q. You know that in-app virtual currency includes things like
9 V-Bucks; right?

10 A. That's right.

11 Q. And you know that Epic pay or Epic Direct Pay is a payment
12 method other than Google Play Billing; right?

13 A. Right.

14 Q. And your e-mail to Mr. Lockheimer is dated January 13th of
15 2020; right?

16 A. Yes.

17 Q. So I heard you say on direct examination that you thought
18 these policies were ambiguous, but you understood from this
19 e-mail that as of January -- as of January 13th, 2020, you
20 understood from this e-mail that Google's payments policy
21 prohibited Epic from using Epic pay for purchases of V-Bucks?
22 You understood that; right?

23 A. I understood that following this rejection, but there were
24 still confounding factors with other apps that Google was
25 allowing to do these things. So this provided complete clarity

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1 to me of what Google's policies were.

2 Q. Just to make sure we're on the same page here, this e-mail
3 that we're looking at provided complete clarity to you about
4 what Google's payments policy required; right?

5 A. Yes.

6 Q. And this was as of January 13th, 2020; right?

7 A. That's right.

8 Q. And you knew that if Epic submitted another version of
9 Fortnite that used Epic pay for purchases of V-Bucks, Google
10 was just going to reject it again; right?

11 A. I would strongly expect that.

12 Q. And so what you decided to do was to try to sneak that
13 version in; right?

14 A. Yes, that's what we decided to do with Project Liberty.

15 Q. And the way you decided to do that was by building a
16 version of Fortnite that Epic could change after it was in the
17 Play Store using something called a Hotfix; right?

18 A. Yes.

19 Q. So let's take a look at Exhibit -- if you could look in
20 your binder, please, at Exhibit 5530.

21 You've got to turn the binder the other way. There's not
22 a lot of space up there, I know.

23 A. I have it.

24 Q. This is a slide deck entitled "Project Liberty Update"
25 dated July 1st of 2020; right?

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1 **A.** Yes.

2 **Q.** All right.

3 **MR. KRAVIS:** At this time we move Trial Exhibit 5530
4 into evidence.

5 **MR. BORNSTEIN:** No objection, Your Honor.

6 **THE COURT:** It's admitted.

7 (Trial Exhibit 5530 received in evidence.)

8 **BY MR. KRAVIS:**

9 **Q.** So, Mr. Sweeney, I'm going to ask you to turn to page 4
10 with me.

11 And do you see at the top there it says "Goal"?

12 **A.** Yes.

13 **Q.** And the first goal reads (as read):

14 "On Apple and Android mobile devices publishers
15 allowed to offer third-party payment options for apps on
16 the Apple App Store and Google Play."

17 Did I read that correctly?

18 **A.** Yes.

19 **Q.** And now I want to direct you to the -- oh, and, by the
20 way, the reason that you mentioned both the Apple App Store and
21 Google Play Store here is because you launched Project Liberty
22 on these two app stores; right?

23 **A.** That's right.

24 **Q.** No other stores? Just these two; right?

25 **A.** There was a price drop that affected other platforms, but

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1 Apple and Google are the only companies whose policies we
2 challenged.

3 Q. Now, the next bullet reads "Strategy"; right?

4 A. Yes.

5 Q. And if you look at the third subbullet there, it says,
6 quote (as read):

7 "If either platform is unwilling, Hotfix option into
8 FN for users to select Epic payment process."

9 Did I read that correctly?

10 A. Yes.

11 Q. "FN" is Fortnite; right?

12 A. Right.

13 Q. And as we just saw, this deck is dated July of 2020;
14 right?

15 A. Right.

16 Q. This deck is after the January e-mail from Google about
17 the payments policy we just saw; right?

18 A. Yes.

19 Q. So at the time of this deck, you knew that this strategy
20 of using Epic payment process in Fortnite violated the payments
21 policy; correct?

22 A. Yes. I understood that when we -- if we launched the
23 Hotfix, then it would be in violation of the Google policies.

24 Q. All right. Let's talk about what a Hotfix is.

25 A Hotfix is an app development term; right?

1 **A.** Yes.

2 **Q.** It refers to making changes in an app through a server;
3 right?

4 **A.** That's right.

5 **Q.** Now, this is different. A Hotfix is different from
6 submitting an updated version of the app to the app store;
7 right?

8 **A.** Right.

9 **Q.** Updates that are submitted to the Google Play Store, for
10 example, are reviewed by Google; right?

11 **A.** Right.

12 **Q.** Whereas, Google does not have the opportunity to review
13 Hotfixes; right?

14 **A.** That's right.

15 **Q.** The Hotfix we are talking about here enabled Epic direct
16 payment in Fortnite; right?

17 **A.** Yes.

18 **Q.** And you made that change to Fortnite using a Hotfix
19 because you expected that if you submitted this as an update to
20 the app store, Google would reject it; right?

21 **A.** Yes.

22 **Q.** And the reason that you expected Google would reject the
23 change if you submitted it to the store is because that's
24 exactly what Epic tried back in December of 2019; right?

25 **A.** Yes.

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1 Q. Now, Google has an agreement with app developers called
2 the Developer Distribution Agreement; right?

3 A. Yes.

4 Q. And you knew that Epic was required to accept the
5 Developer Distribution Agreement to put its games in the
6 Play Store; right?

7 A. That's right.

8 Q. And you knew that Epic was also required to comply with
9 Google's developer program policies; right?

10 A. Yes.

11 Q. And you knew that adding the Epic direct payment option
12 through the Hotfix violated the payments policy; right?

13 A. Yes.

14 Q. And you did it anyway; right?

15 A. We did it precisely for that reason.

16 Q. Now, you gave the consoles a heads-up that this was
17 coming; right?

18 A. Epic didn't disclose its Hotfix plans to consoles, but I
19 gave at least Microsoft an indication that something big was
20 going to happen in Fortnite.

21 Q. Let's take a look at that. Could you turn to Exhibit 9016
22 in your binder?

23 A. (Witness examines document.) Yes.

24 Q. Mr. Sweeney, this is an e-mail exchange between you and
25 someone named Phil Spencer at Microsoft; right?

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1 **A.** Yes.

2 **Q.** It's dated August 5th of 2020; right?

3 **A.** Yes.

4 **Q.** This is just like a couple weeks maybe before the Hotfix?

5 **A.** Yes.

6 **MR. KRAVIS:** All right. We move Trial Exhibit 9016
7 into evidence.

8 **MR. BORNSTEIN:** No objection, Your Honor.

9 **THE COURT:** It's admitted.

10 (Trial Exhibit 9016 received in evidence.)

11 **BY MR. KRAVIS:**

12 **Q.** Now, Mr. Sweeney, I want to direct your attention to the
13 third paragraph.

14 The third paragraph reads (as read):

15 "Epic has certain plans for August that will provide
16 an extraordinary opportunity to highlight the value
17 proposition of consoles and PCs in contrast to mobile
18 platforms and to onboard new console users. While I can't
19 share details with any third party at this point, I give
20 you Epic's assurance that our efforts will be positive and
21 supportive of Microsoft, Xbox, and Windows."

22 Did I read that correctly?

23 **A.** Yes.

24 **Q.** In that paragraph you're talking about Project Liberty;
25 right?

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1 **A.** I'm referring to Project Liberty without disclosing Phil
2 on the details of the plan.

3 **Q.** But I'm just -- the thing you're referring to in the
4 paragraph is the thing we've been talking about as
5 Project Liberty; right?

6 **A.** Yes.

7 **Q.** And when you say "I give you Epic's assurance that our
8 efforts will be positive and supportive of Microsoft, Xbox, and
9 Windows," you are telling Mr. Spencer at Microsoft that
10 Microsoft Xbox is not going to be targeted along with Google
11 and Apple in Project Liberty; right?

12 **A.** That's right.

13 **Q.** And that is the case even though Epic pays a 30 percent
14 commission on the Microsoft Xbox; correct?

15 **A.** That's true.

16 **Q.** Now I want to show you another exhibit here. If you could
17 turn to 5497 in your binder.

18 This is another e-mail exchange between you and
19 Mr. Spencer at Microsoft; right?

20 **A.** Yes.

21 **Q.** This is from, I think, just two days later, August 7th of
22 2020?

23 **A.** Yes.

24 **MR. KRAVIS:** At this time we move Trial Exhibit 5497
25 into evidence.

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1 **MR. BORNSTEIN:** No objection, Your Honor.

2 **THE COURT:** It's admitted.

3 (Trial Exhibit 5497 received in evidence.)

4 **BY MR. KRAVIS:**

5 **Q.** Now, in the subject line of your e-mail to Mr. Spencer is
6 "Apple"; right?

7 **A.** Yes.

8 **Q.** And as we just talked about, Apple was the other company
9 besides Google that was targeted in Project Liberty; right?

10 **A.** That's right.

11 **Q.** And in your e-mail to Mr. Spencer, in the third sentence
12 there you write, quote (as read):

13 "You'll enjoy the upcoming fireworks show."

14 Did I read that correctly?

15 **A.** Yes.

16 **Q.** The "fireworks show" refers to the Hotfix; right?

17 **A.** Yes.

18 **Q.** And, by the way, the heads-up that went out, it was not
19 just Microsoft, was it?

20 **A.** I'm not remembering communications with Sony.

21 **Q.** Well, let's take a look. If you could turn back to
22 Exhibit 5530, which is already in evidence. It's in the
23 binder, and if you could turn with me to page 6, please.

24 I want to direct your attention to the speaker notes at
25 the bottom of the slide. Do you see those?

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1 A. Yes.

2 Q. And it reads here (as read):

3 "Dependencies: Prebrief appropriate partners,
4 console, et cetera, starting two weeks from Hotfix
5 July 20th."

6 Right? Did I read that correctly?

7 A. Yes. We were previewing them on the price reduction.

8 Q. And that is not just -- it wasn't just Microsoft; right?

9 A. We prebriefed all of the console partners on the price
10 reduction.

11 Q. If you look on page 24 of the same deck, it says here
12 "Partner Communications"; right?

13 A. Yes.

14 Q. And the first category, the first row there is "Console
15 First Party." Did I read that correctly?

16 A. Yes.

17 Q. And Sony, Microsoft, and Nintendo are all listed; right?

18 A. Yes.

19 Q. The Microsoft contact is Phil Spencer; right?

20 A. Yes.

21 Q. That's the guy who was on the fireworks show e-mails;
22 right?

23 A. Yes.

24 Q. And then there are -- there's a contact listed from Sony;
25 right?

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1 A. Yes.

2 Q. And there's a contact listed from Nintendo; right?

3 A. Yes.

4 Q. And as we just saw in your outreach to Phil Spencer, you
5 assured him that Microsoft would not be targeted in
6 Project Liberty; right?

7 A. Yes.

8 Q. And the purpose of the outreach to Sony and Nintendo was
9 to give them the same kind of warning; right?

10 A. All I'm aware of is Epic outreached to Sony and Nintendo
11 to brief them on the price drop.

12 Q. And the reason that you're reaching out to these consoles
13 is because, as we saw earlier, Epic makes billions of dollars
14 from Fortnite off of those consoles; right?

15 A. Yes.

16 Q. Now, you testified, I think on direct examination, that
17 what you really want here is, I think you said, to give
18 customers a better deal. Did I hear that correctly?

19 A. Yes.

20 Q. But, in fact, that's not what you do today, is it?

21 A. There -- because -- the only prices we did not drop were
22 through Google Play and IOS app store, and we've been blocked
23 from those platforms. All of the prices in Fortnite everywhere
24 are the same.

25 Q. Yeah, that's what I'm talking about.

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1 So let's go back to the slide, and if we could have the
2 next slide, please.

3 No. I'm sorry. Can we go back, please?

4 No. I'm sorry. You had it right.

5 As we talked about a moment ago, Epic pays a 30 percent
6 commission for in-app purchases that are made through the
7 consoles; right?

8 **A.** Yes.

9 **Q.** And the price of a thousand V-Bucks on the consoles as we
10 sit here today is \$8.99; right?

11 **A.** That's right.

12 **Q.** And in Slide 34 I think shows what it looks like when
13 you're buying a thousand V-Bucks in the PlayStation Store;
14 right?

15 **A.** Yes.

16 **Q.** It's a thousand V-Bucks is 8.99; right?

17 **A.** Yes.

18 **Q.** Now, you pay a 12 percent service fee to Samsung; right?

19 **A.** Right.

20 **Q.** And the price of a thousand V-Bucks in versions of
21 Fortnite from the Samsung Galaxy Store is also \$8.99; right?

22 **A.** Yes.

23 **Q.** And I think we're looking at a very slightly different
24 slide here. This is what it looks like when you buy a thousand
25 V-Bucks on a Galaxy phone; right?

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1 **A.** Yes.

2 **Q.** It's 8.99 for a thousand V-Bucks; right?

3 **A.** Right.

4 **Q.** Now, you do not pay those service fees in your own store;
5 right?

6 **A.** We only pay fees to a payment processor.

7 **Q.** Right. The 30 percent that you pay to the consoles and
8 the 12 percent that you pay to Samsung, you do not pay that in
9 your own store; right?

10 **A.** That's right.

11 **Q.** And yet the price of a thousand V-Bucks in your store is
12 8.99; right?

13 **A.** Right.

14 **Q.** So if you look at the next slide, this is what it looks
15 like to buy a thousand V-Bucks in the Epic Game Store; right?

16 **A.** Yes.

17 **Q.** And the price here is the same as -- you've got to go on
18 the right and maybe blow it up a little bit. It's really
19 small.

20 The price here is the same that we just saw on the console
21 and on Galaxy. 8.99; right?

22 **A.** That's right.

23 **Q.** Can we have the next slide, please?

24 So this slide shows how these service fees shake out;
25 right?

SWEENEY - CROSS / KRAVIS

1 A. That's right.

2 Q. In the store -- in your store, the Epic Game Store, you
3 are saving the 30 percent that you pay on -- the 30 percent
4 service fee that you pay the gaming consoles; right?

5 A. Yes.

6 Q. And in your store, you are saving the 12 percent service
7 fee you pay Samsung; right?

8 A. We're saving the portion of it that's not covered by
9 payment processing costs, which is 3 percent.

10 Q. And you do not pass those savings on to the customers in
11 your store; right?

12 A. That's right.

13 Q. You're putting the money in your pocket; right?

14 A. We're charging the same price everywhere, though Epic's
15 losing money now.

16 Q. You are charging the same price everywhere even though you
17 are paying 30 percent on the consoles, you're paying 12 percent
18 to Samsung, and you are paying nothing in your own store in
19 terms of service fees; right?

20 A. That's correct.

21 Q. Now I want to ask you about the -- what you described as
22 the -- I think the customer choice option or the payment choice
23 screen from the Hotfix. Do you remember that?

24 A. Yes.

25 Q. Now, just to be clear, having Fortnite in the Play Store

SWEENEY - CROSS / KRAVIS

1 would allow Epic to reach users who are looking for a game and
2 decide to try Fortnite because it's in the Play Store; right?

3 **A.** Yes.

4 **Q.** And another value that Epic gets when its games are in the
5 Google Play Store is that Google provides an automated virus
6 scan of the apps; right?

7 **A.** That's a value for customers. It's not a value to us
8 because our apps don't have viruses.

9 **Q.** I just want to be clear. When Epic lists a game on
10 Google Play, you do not regard an automated virus scan as a
11 value that Epic gets from that?

12 **A.** I see that as a value customers get from it.

13 **MR. KRAVIS:** Your Honor, may I please direct the Court
14 to Tab 1 of your binder, page 216, line 20?

15 **THE COURT:** 20?

16 **MR. KRAVIS:** Yes, 216:20 to 217:7, please.

17 (Pause in proceedings.)

18 **THE COURT:** That's fine.

19 **BY MR. KRAVIS:**

20 **Q.** Mr. Sweeney, you were deposed in this case; right?

21 **A.** Yes.

22 **Q.** And you testified under oath; right?

23 **A.** Yes.

24 **Q.** And if we could have the clip here, please.

25 And you were asked at the deposition, quote (as read):

1 **"QUESTION:** When Epic lists a game on Google Play with
2 payments going through Google Play Billing, what value
3 does Epic get from that?"

4 Your answer was (as read):

5 **"ANSWER:** My understanding is that Google provides an
6 automated virus scan of the app."

7 Did I read that correctly?

8 **A.** Yes.

9 **Q.** Now, another value that -- we can take that down. Thank
10 you.

11 Another value that Epic gets when its games are listed in
12 the Google Play Store is that Google makes the apps listing
13 available in the catalog; right?

14 **A.** Yes.

15 **Q.** And that might cause the app to return in response to a
16 customer searches for it; right?

17 **A.** Yes.

18 **Q.** Another value that Epic gets from listing its game in the
19 Google Play Store is that Google provides the tools that enable
20 the user to download the app; right?

21 **A.** Yes.

22 **Q.** And with all those services that the Play Store provides,
23 as we saw earlier, the only time that Google charges Epic a
24 service fee is when Epic makes a sale of V-Bucks inside the
25 Fortnite app downloaded from the Play Store; right?

SWEENEY - CROSS / KRAVIS

1 **A.** I'm sorry. Could you repeat the question?

2 **Q.** Yeah. Yeah. No problem.

3 With all those services that the Play Store provides, the
4 only time that Google charges Epic a service fee is when Epic
5 makes a sale of V-Bucks in the app that is downloaded from the
6 Play Store; right?

7 **A.** No.

8 **Q.** That is not the only time that Google charges Epic a
9 service fee?

10 **A.** Google charges Epic for advertisements in the Google Play
11 Store also.

12 **Q.** I see. I'm sorry.

13 When it comes to -- when it comes to in-app purchases --
14 let's set aside the ads.

15 When it comes to in-app purchases, with all those services
16 the Play Store provides, the only time that Google charges Epic
17 a service fee is when Epic makes a sale of V-Bucks inside the
18 Fortnite app downloaded from the Play Store; right?

19 **A.** That's right.

20 **Q.** And when we talk about this payment choice screen, what we
21 are really talking about is Epic avoiding even that service
22 fee; correct?

23 **A.** Yes. That Google -- yes, Epic's billing results in no
24 service fee to Google.

25 **Q.** That's exactly where I was going.

SWEENEY - CROSS / KRAVIS

1 Can we look at Slide 38, please?

2 I think this is actually already in evidence as 8045. I
3 think you testified on direct examination that this is what the
4 payment screen looked like after the Hotfix was implemented;
5 right?

6 A. Yes.

7 Q. And so the idea -- by the way, Epic Direct Payment, that's
8 Epic's payment system; right?

9 A. Yes.

10 Q. And Google Play Store, that's Google Play Billing; right?

11 A. Right.

12 Q. And so the idea here is that when a user decides to buy
13 some V-Bucks in the app downloaded from the Play Store and they
14 get to the checkout screen, they pick one of these two options;
15 right?

16 A. Yes.

17 Q. Now, just to be clear about this, you set both of these
18 prices; right?

19 A. Yes.

20 Q. It's not like -- the Google Play Store price, that's not
21 set by Google; right? That is also set by you?

22 A. Yes.

23 Q. And what you want is for the rule to be that Google cannot
24 charge Epic any fee when the user picks Epic Direct Payment;
25 right?

SWEENEY - CROSS / KRAVIS

1 A. Yes, that's what I would love.

2 Q. That's what you would love. And the reason -- the reason
3 that you would love that is because you can set both of these
4 prices. And as long as you set the Google Play Billing price a
5 little bit higher, more people are going to choose Epic Direct
6 Payment; right?

7 A. Yes.

8 Q. And when that happens, Google gets nothing; right?

9 A. That's right.

10 Q. Now, you testified earlier that you're not seeking damages
11 in this case; correct?

12 A. Right.

13 Q. Mr. Sweeney, your company would make hundreds of millions
14 of dollars from this arrangement that we're looking at now on
15 the screen; isn't that right?

16 A. Well, I think it would be billions of dollars.

17 Q. All those service fees that you pay to the consoles, to
18 Samsung, all of those service fees vanish every time the
19 customer picks Epic Direct Payment; right?

20 A. Yes, that's right.

21 Q. And that would be the rule no matter how many millions of
22 users find your app in the Google Play Store; right?

23 A. I would love that.

24 Q. And that would be the rule no matter how many billions of
25 dollars in in-app purchases you make through the Google Play

1 Store; right?

2 A. I think that would be awesome.

3 Q. And just to be clear, no other company has given Epic this
4 deal; right?

5 A. I don't believe that's currently correct.

6 Q. Well, as of the time of this lawsuit at least, Apple did
7 not let Epic use its own billing system and avoid paying fees;
8 right?

9 A. No.

10 Q. Sony does not let Epic use its own billing system and
11 avoid paying fees; right?

12 A. Right.

13 Q. Microsoft does not let Epic use its own billing system on
14 Xbox to avoid paying fees; right?

15 A. That's right.

16 Q. Nintendo does not let Epic use its own billing system on
17 the Switch to avoid paying fees; right?

18 A. Right.

19 Q. Samsung does not let Epic use its own billing system to
20 avoid paying fees; right?

21 A. I believe that has changed.

22 Q. Well, as of the time of this lawsuit, that was not the
23 case; correct?

24 A. Right.

25 Q. And so what you are asking for in this lawsuit is a deal

SWEENEY - REDIRECT / BORNSTEIN

1 that you do not have with Apple and you do not have with any of
2 the consoles; right?

3 **A.** That's what I would love to get out of this lawsuit.

4 **MR. KRAVIS:** Pass the witness.

5 **THE COURT:** Brief recross.

6 **MR. BORNSTEIN:** Thank you, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. BORNSTEIN:**

9 **Q.** Mr. Sweeney, counsel for Google just walked you through a
10 whole bunch of different platforms. Do you recall that?

11 **A.** Yes.

12 **Q.** Did he mention personal computers?

13 **A.** No.

14 **Q.** Did he mention mackintosh computers?

15 **A.** No.

16 **Q.** What service fee, to use counsel's phrase, does Epic pay
17 on PCs, personal computers?

18 **A.** Microsoft gets nothing when we distribute Fortnite
19 directly.

20 **Q.** And what fee does Epic pay to Apple on Macintosh
21 computers?

22 **A.** Zero.

23 **Q.** And there was a chart that were a demonstrative that was
24 used in the beginning of your exam with all these different
25 platforms and 30 percent fees. Do you recall that?

SWEENEY - REDIRECT / BORNSTEIN

1 **A.** Yes.

2 **Q.** Was the personal computer on that chart?

3 **A.** No.

4 **Q.** Was the Macintosh on that chart?

5 **A.** No.

6 **Q.** Do you know what a general computing device is?

7 **A.** Yes.

8 **Q.** What -- can you just give us an explanation of a general
9 computing device?

10 **A.** A general computing device is something that you can do
11 just about anything on. You could browse the web or install
12 apps or run your life, in which many people do run their lives
13 on, as opposed to a specialized device like a console or a
14 smart thermostat or a watch, which has a very specialized
15 single-purpose use.

16 **Q.** Can you give some examples of general computing -- general
17 purpose computing devices?

18 **A.** Sure. Smartphones are general computing devices. People
19 live, work, play on them. Computers, both Windows PCs and
20 Macs, are both general computing devices. People live, work,
21 and play on them.

22 **Q.** And so on general purpose, computing devices like PCs and
23 Macs, what fee does Epic pay to the platform?

24 **A.** Nothing.

25 **Q.** Is that what Epic wants on Android?

SWEENEY - REDIRECT / BORNSTEIN

1 **A.** Yes.

2 **Q.** You were shown a slide that came from the opening
3 statement that had some red bars and some blue bars.

4 **MR. BORNSTEIN:** Can we put up Slide 33?

5 **TECH PERSONNEL:** Ms. Clark, would you mind switching
6 over to plaintiffs?

7 **BY MR. BORNSTEIN:**

8 **Q.** Mr. Sweeney, do you recall seeing this slide during Google
9 counsel's examination?

10 **A.** Yes.

11 **Q.** And you responded to a question he asked about whether you
12 thought this was a fair comparison by saying that it was fair
13 if these were a la carte. Do you recall that?

14 **A.** Yes.

15 **Q.** You were not permitted to explain what you meant. I'd
16 like to give you that opportunity now.

17 **A.** Well, on genuine open platforms, developers are free to
18 choose whatever combination of services you want to use. You
19 might use one payment processor. You might use your own
20 employees or a contractor for customer support. You might get
21 bandwidth from any number of providers, like Amazon or Ekomi,
22 and so a developer there is typically picking and choosing from
23 among the best solutions available and making individualized
24 choices.

25 Whereas, in the case of Google Play, the developer is

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1 forced to take all Google services in these areas.

2 **Q.** And do you know -- Mr. Sweeney, focusing on the blue bars
3 here, do you know whether those percentage prices reflected
4 there are only payment processing or whether there are other
5 services included?

6 **A.** Yes. These are payment service providers, which provide
7 all-in support for both processing the payments, basically
8 moving the money around, and also customer support associated
9 with those payments when somebody asks for a refund or needs
10 some sort of support.

11 Whereas, a low-level payment processor, like Visa or
12 MasterCard, typically charges a much lower fee, like 2 and a
13 half to 3 and a half percent, for just processing a payment.

14 **Q.** You had some questions that you were asked about
15 Activision Blizzard King or ABK. Do you recall that?

16 **A.** Yes.

17 **Q.** And I believe your testimony was that you had suspicion
18 that ABK was not serious about launching its own mobile
19 distribution platform on Android; right?

20 **A.** That's right.

21 **Q.** Did you actually know what ABK was or was not planning?

22 **A.** I know only what they told me, which was they had a
23 development team working on a store, and that they wanted to
24 join our store efforts and their store efforts to have a more
25 powerful store; but I had not met with or seen the development

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1 team, so I had nothing more to go on than the information Armin
2 Zerza was sharing.

3 Q. And did you actually know what it was that ABK was telling
4 Google?

5 A. No.

6 Q. Did you actually know what ABK would have done if it had
7 not signed a deal with Google?

8 A. No.

9 Q. Do you actually know what Google believed that ABK would
10 have done if no deal were signed?

11 A. I've seen some documents on that here in this courtroom,
12 but I'm not sure what all Google had -- what conclusions they'd
13 drawn from that.

14 Q. So your testimony about your suspicions was based only on
15 what you had seen at the time; is that right?

16 A. Yes.

17 Q. You were asked some questions about the number of
18 Fortnite-capable Android devices. Do you recall that?

19 A. Yes.

20 Q. And there was some debate about 400 million and
21 200 million; correct?

22 A. Yes.

23 Q. And counsel directed you to a document from 2018 where you
24 had written 200 million. Do you remember that?

25 A. Yes.

SWEENEY - REDIRECT / BORNSTEIN

1 **Q.** Can I ask you to look, please, in it's the big binder in
2 front of you, at Exhibit 10677?

3 **A.** Yes.

4 **Q.** And this is an e-mail exchange in which you are one of the
5 participants, dated May 11, 2019; correct?

6 **A.** Yes.

7 **MR. BORNSTEIN:** Your Honor, I'd move the admission of
8 Exhibit 10677.

9 **MR. KRAVIS:** No objection.

10 **THE COURT:** It's admitted.

11 (Trial Exhibit 10677 received in evidence.)

12 **BY MR. BORNSTEIN:**

13 **Q.** And if we look on page 2 of this document, Mr. Sweeney,
14 there's an e-mail from you on May 3rd of 2019. Do you see
15 that?

16 **A.** Yes.

17 **Q.** And one, two, three, four paragraphs down there is a
18 sentence that says (as read):

19 "Other than a few Samsung flagship devices, Android
20 users skew low end and many of the common devices are not
21 yet supported by Fortnite. The estimate is something like
22 400 million compatible Android devices."

23 Do you see that?

24 **A.** Yes.

25 **Q.** Okay. Is this the subsequent estimate of

SWEENEY - REDIRECT / BORNSTEIN

1 Fortnite-compatible Android devices that you explained to
2 Google's counsel?

3 **A.** Yes. A bunch of things had changed by this point.

4 **Q.** Thank you.

5 There were some questions that you got about a company
6 called Tencent. Do you recall that?

7 **A.** Yes.

8 **Q.** Who is Tencent in relation to Epic?

9 **A.** Tencent is an investor in Epic who made a major investment
10 in the company in 2012.

11 **Q.** Does Tencent control Epic?

12 **A.** No.

13 **Q.** Who does?

14 **A.** I do. I'm the controlling shareholder of Epic.

15 **Q.** Did Tencent come up with the idea of Project Liberty?

16 **A.** No. I came up with the idea of Project Liberty; and when
17 we disclosed them, they were rather surprised.

18 **Q.** Did you know -- speaking of surprise, did you know
19 anything about Tencent striking a Project Hug deal with Google
20 at the time?

21 **A.** No. I first learned about that in this trial right here.

22 **Q.** There were some questions about an e-mail you were shown
23 with somebody from Samsung in April of 2020. Do you recall
24 that?

25 **A.** Yes, TM Roh.

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1 Q. Correct. And Google's counsel asked you a few questions
2 about whether or not Samsung was trying to sell the
3 Galaxy Store. Do you remember that?

4 A. Yes.

5 Q. Now, is Fortnite currently available on Android devices in
6 the Samsung Galaxy Store on Android?

7 A. Yes.

8 Q. How is it doing?

9 A. It's not doing well. You know, some number of users are
10 downloading it all the time, but it is at a much lower rate
11 than we estimate it would be if we were on Google Play.

12 Q. You were asked some questions about whether or not your
13 console partners were prebriefed on the Project Liberty effort.
14 Do you remember that?

15 A. Yes.

16 Q. What was it that you told your console partners about
17 Project Liberty in advance of the Hotfix being launched?

18 A. We briefed them on our price drop because one component of
19 Project Liberty was dropping the prices of V-Bucks everywhere
20 except through Google's direct -- Google's payment processor
21 and Apple's payment processor.

22 That required coordinating with the consoles, so we shared
23 our price drop plans with them. We didn't share our intention
24 to mount a legal challenge to Apple or Google nor our intention
25 to do a Hotfix with our console partners.

SWEENEY - REDIRECT / BORNSTEIN

1 Q. One last set of questions, Mr. Sweeney.

2 Near the end of Google counsel's exam, you were shown
3 another set of demonstratives about the prices that Fortnite
4 charges on different platforms. Do you recall that?

5 A. Yes.

6 Q. And I think the point of the questioning was that Fortnite
7 charges the same price or Epic charges the same price for
8 V-Bucks on different platforms even though there may be
9 different fees in different places, like the zero on PC and the
10 12 percent on Samsung; correct?

11 A. That's right.

12 Q. Would you please explain why Epic charges the same price
13 on those different platforms even though there are different
14 fees?

15 A. Sony has a rule that they impose on us and other
16 developers called a most favored nations pricing term which
17 says that we cannot sell outside of PlayStation at a lower
18 price than we sell anything on PlayStation, and that constrains
19 our ability to drop prices on other platforms besides
20 PlayStation.

21 And then although we can make independent decisions on
22 Xbox and Nintendo Switch, I don't see how we could explain that
23 to customers that we have differentiated pricing amongst
24 consoles with the same terms.

25 Q. So Sony imposes this rule as part of its contractual

SWEENEY - RECROSS / KRAVIS

1 arrangements with Epic?

2 **A.** Yes. We don't like it, but it was a required term in
3 order to get distribution on the PlayStation platform.

4 **Q.** Thank you, Mr. Sweeney.

5 **MR. BORNSTEIN:** I have nothing further.

6 **THE COURT:** Okay. Careful on the way down.

7 **MR. KRAVIS:** Your Honor, may I cross on that one last
8 point?

9 **THE COURT:** Just very briefly, please.

10 Sorry. Just one minute.

11 **RECROSS-EXAMINATION**

12 **BY MR. KRAVIS:**

13 **Q.** Just very briefly, Mr. Sweeney, on that one last point.

14 I think you were testifying about the most favored nations
15 agreement that Epic has with Sony. Do I have that right?

16 **A.** Yes.

17 **Q.** And I think you testified that that agreement does not
18 allow you to charge a lower price in the Epic Game Store;
19 right?

20 **A.** My understanding is that it affects Fortnite game and not
21 the Epic Game Store in general, but that it prevents us from
22 charging a lower price for Fortnite in-app purchases elsewhere
23 versus on PlayStation.

24 **Q.** That's a contract you have with Sony; right?

25 **A.** Yes.

JURY QUESTION

1 **Q.** Sony has invested hundreds of millions of dollars in Epic
2 over the last few years; right?

3 **A.** I believe it's 1.25 billion.

4 **Q.** Okay. So Sony has invested \$1.25 billion in Epic, and
5 Epic has an agreement with Sony not to offer the lower prices
6 in other locations; right?

7 **A.** Yes, which is a standard Sony contract term.

8 **MR. KRAVIS:** Thank you.

9 **THE COURT:** Okay. You may step down.

10 Who do we have next? Oh, you're going to have to bring in
11 someone for that thing we talked about. Okay?

12 **MR. POMERANTZ:** Your Honor?

13 **THE COURT:** Sorry. Oh, yes, of course. All right.
14 Please hand it to Ms. Clark.

15 What number is this?

16 **THE CLERK:** 5.

17 **THE COURT:** 5.

18 **THE COURT:** Okay. All right. Jury Question Number 5,
19 which I will ask.

20 Mr. Sweeney, when all were active, approximately what
21 percent of Fortnite's in-app revenue came from each source,
22 such as PC, Mac, console, Apple, and Android?

23 **THE WITNESS:** Oh, okay. When all of them were active,
24 let's see --

25 **THE COURT:** If it changes over time, you can put a

1 date in.

2 **THE WITNESS:** Well, I think a good time would be
3 around like early 2020 when they were all available.

4 Let's see, my recollection is about 5 percent of Fortnite
5 revenue came from Apple IOS. Roughly 0.5 percent came from
6 Android.

7 Let's see -- I'm sorry. I'm bad at math, this kind of
8 math.

9 Let's see, and then the rest was distributed among PC and
10 console. PlayStation was the number one platform for Fortnite.
11 I believe at peak PlayStation had about 30 percent, Xbox and PC
12 had about -- about 20 percent -- no. I think -- sorry. PC and
13 Nintendo Switch about 20 percent, and Xbox around 15 percent.
14 And I think that adds up to 105 percent. So I'm sorry.

15 **THE COURT:** Okay. That's close enough.

16 All right. Thanks a lot. You can step down.

17 (Witness excused.)

18 **THE COURT:** Here, Lisa. I'm going to give this to
19 you.

20 Who do we have next?

21 **MR. BORNSTEIN:** Your Honor, our next witness is a
22 video deposition of a witness from Amazon.

23 **THE COURT:** All right.

24 **MR. BORNSTEIN:** The witness' name is Donn Morrill,
25 M. -- well, first name is D-O-N-N, last name M-O-R-R-I-L-L.

1 And, Your Honor, we have a few exhibits to move in in
2 advance without objection.

3 **THE COURT:** Please.

4 **MR. BORNSTEIN:** Ms. Clark has the sheet, but the
5 exhibits are 1362, 1363, 1366, 11405, 11406, and 11408.

6 **MR. KRAVIS:** No objection.

7 **THE COURT:** Okay. They're admitted.
8 (Trial Exhibits 1362, 1363, 1366, 11405, 11406, and
9 11408 received in evidence.)

10 **MR. BORNSTEIN:** Thank you, Your Honor.

11 (Video was played but not reported.)

12 **THE COURT:** That's it for today.

13 All right. I've got another thing I have to attend to, so
14 we're going to stop at 3:30 on the dot.

15 Remember, as we talk about every day, clear your mind.
16 Put this all behind you. No research. No communications. No
17 thinking about this.

18 I'll see you tomorrow morning at 9:00 a.m.

19 **THE CLERK:** All rise.

20 (Proceedings were heard out of the presence of the jury:)

21 **THE COURT:** Okay. See you in the morning.

22 (Proceedings adjourned at 3:30 p.m.)

23 ---oOo---

24

25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, November 20, 2023

A handwritten signature in black ink, reading "Kelly Shainline", is written over a horizontal line.

Kelly Shainline, CSR No. 13476, RPR, CRR
U.S. Court Reporter